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**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

102  
SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,

January 8, 2002

25 Van Ness Avenue, #70, Lower Level

POLLY MARSHALL  
VICE-PRESIDENT

**AGENDA**

DOCUMENTS DEPT.

JAN - 4 2002

SAN FRANCISCO  
PUBLIC LIBRARY

- I. Call to Order  
KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

**NOTE:** Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1935 Franklin St. #503 AL010184

The landlord appeals the decision granting a rent increase based on comparable rents, disputing the calculation of allowable banking.

B. 1670 Clay St., Apt. 12 AT0010188

The tenant appeals determining that the unit is not her principal place of residence pursuant to Rules Section 1.21.

C. 2526 Van Ness Ave. AT010187

The tenant appeals the decision partially granting claims of decreased housing services.

D. 1369 Hyde St. #65 AL010189

The landlord appeals the remand decision granting a claim of decreased housing services due to the loss of use of a garage.

E. 469 - 8<sup>th</sup> Ave. AT010191

The tenant appeals the decision partially granting claims of decreased housing services.

F. 3 - 27<sup>th</sup> St. AT010190



The tenant appeals the decision finding a rent increase warranted pursuant to Costa-Hawkins.

G. 5309-5311A Mission St. AL010192

The landlord appeals the decision granting claims of decreased housing services, alleging non-receipt of the Notice of Hearing.

H. 2310 Powell St. #305 AT010194

Two tenants request an extension of the hardship deferral to a capital improvement passthrough granted last year.

I. 3330 Pierce St. #104 AT010193

The tenants appeal the decision granting a rent increase based on increased operating expenses.

J. 747 Geary St., #504 AT010195

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendment to Rules and Regulations Section 6.10  
(Goodwin v. Rent Board {Superior Court Case No. 317339})

B. Petition for Rules and Regulations Section 1.21 Determinations

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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PRESIDENT  
POLLY MARSHALL  
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, January 8, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

JAN 18 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:15 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Lightner; Marshall;  
Mosser; Wasserman.  
Commissioners not Present: Hobson; Justman.  
Staff Present: Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:36 p.m.; Commissioner Mosser went off the record at 8:21 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 18, 2001 with the following correction: to reflect that the motion regarding the case at 735 Geary St., Apt. 504 (AT010179) was made by Commissioner Becker and seconded by Commissioner Aung. (Gruber/Marshall: 5-0)

IV. Remarks from the Public

- A. Tenant Christian Lackner of 2526 Van Ness Ave. (AT010187) reminded the Board that he no longer has the same use of his storage space; said it would be illegal to use the space; and said he does not believe that he should have to pay for the space.
- B. Attorney Marilyn Kalman, representing the tenant at 3 – 27<sup>th</sup> St. (AT010190), told the Board that the tenant, who was not able to competently present his case, recently retained her. Ms. Kalman said that other tenants at the unit are affected by the decision, and asked that the case be remanded for another hearing.
- C. Attorney Karen Uchiyama, representing the landlord in the case concerning 1670 Clay St., Apt. 12 (AT010188), said that there is an abundance of evidence to support the decision, and maintained that the tenant has not resided in the unit for over one year.
- D. Attorney Rebecca Kruse, representing the tenant in the case at 1670 Clay St., Apt. 12, informed the Board that the tenant's condominium in Florida



has been rented out and is no longer available to her as a residence. According to Ms. Kruse, since the passage of Rules and Regulations Section 1.21, the tenant has returned to San Francisco and obtained employment.

- E. Tenant Gloria Botelle of 1670 Clay St., Apt. 12, said that the landlord took pictures of her apartment and is "resorting to the lowest level" to get her out of the unit.
- F. Alex Chaudoir, landlord in the case at 3 – 27<sup>th</sup> St. said that the tenants were given every opportunity to present their case; the Administrative Law Judge was fair; and there is no value in reopening the case.

V. Consideration of Appeals

A. 1670 Clay St., Apt. 12

AT010188

The landlord filed a petition seeking a determination as to whether the unit constituted the tenant's principal place of residence. The Administrative Law Judge found that the tenant was not a "tenant in occupancy" pursuant to Rules and Regulations Section 1.21 because she had resided in a unit in Florida which she owns with her mother for the past year, and that is the place to which she returns after traveling or job-related training. The tenant appeals, claiming that the Administrative Law Judge erred by applying Section 1.21 retroactively, by not considering the elements enumerated in the Section and misapplying the facts as they relate to "usual place of return." The tenant also argues that she had no notice that being away from her unit for an extended period of time would jeopardize the rent controlled status of her tenancy; that she has only been gone for reasonable temporary periods of absence, always with the intention of returning to her home in San Francisco; and that the Decision presents her with a financial hardship.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to examine whether the unit constituted the tenant's principal place of residence between the date of enactment of Rules and Regulations Section 1.21 and the date of filing of the petition; behavior before the date of enactment of the regulation and up until the date of the hearing can be considered.  
(Wasserman/Gruber: 4-1; Becker dissenting)

B. 1935 Franklin #503

AL010184

The landlord's petition for a rent increase based on comparable rents was granted, and a rent increase from \$930.00 to \$1,650.00 was approved. Additionally, the landlord was found liable to the tenants in the amount of \$59.52 due to a one-month overpayment in rent. The Administrative Law Judge found that the prior resident manager of the building had approved the tenants' exchanging units in the building at the same rent, but lacked the authority to do so, which constituted fraud or "some other reason" for the tenants' rent having been set low. The tenants' appeal of the portion of the decision allowing the comparables rent increase was considered at the October 30, 2001 Board meeting. The landlord appeals the determination that a new tenancy commenced in 1998 and, therefore, no banking was available to the landlord prior to that time. On appeal, the landlord maintains that since the tenancy was assigned, all rights and liabilities of the prior tenancy accrue to the new tenancy; that the decision set the rent at a discounted level, and not at market; there are factual errors in the decision; and the actions taken by the Board in granting the tenants'





appeal at the October 30<sup>th</sup> meeting constitute an abuse of discretion and conflict with the court's decision in the case of Vega v. City of West Hollywood

MSC: To recuse Commissioners Lightner and Becker from consideration of this appeal. (Murphy/Gruber: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record on the issue of the allowable banking only. (Murphy/Gruber: 4-0)

C. 2526 Van Ness Ave.

AT010187

The tenant's appeal was filed five days late because he allegedly was informed by a staff member that the appeal had to be postmarked, rather than received by the office, on the 15<sup>th</sup> day after mailing of the decision; and the Thanksgiving Holiday compounded what would have been one day's untimeliness.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Gruber: 5-0)

The tenant's petition alleging decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant in the amount of \$40.00 due to the lack of heat in the unit for an 8-day period. The tenant's claim that no longer being allowed to store combustible materials in his storage space constitutes a substantial decrease in services was denied, as it had been in prior cases before the Board. On appeal, the tenant asserts that there are now different circumstances and evidence that warrant reconsidering the question of whether the changed use of the storage space constitutes a decrease in services.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

D. 1369 Hyde St. #65

AL010189

The tenant's petition alleging decreased housing services due to the removal of garage space in the building was granted and the landlord was found liable to the tenant in the amount of \$300 per month, the current fair market value of the parking space. The landlord appealed, contending that the tenant should not be granted a rent reduction upon removal of the housing service that is greater than the amount they were paying for the service. The appeal was accepted and the case was remanded for a hearing to take evidence regarding the intended use of the parking space and to consider the landlord's credibility regarding the long-term use of the space. The landlord did not personally appear at the remand hearing. Therefore, the Administrative Law Judge was unable to assess the landlord's credibility, and determined that a sworn declaration submitted by the landlord constituted hearsay that was not sufficiently reliable and trustworthy to form the sole support for a finding in the landlord's favor. The original decision was therefore upheld. The landlord appeals the remand decision, asserting that: the garage space has not been re-rented, although it has been eleven months since it was withdrawn from the tenant's use, and there is no evidence that it will not be used by the owner; there is no authority in the Ordinance for a rent reduction greater than the monies demanded or paid for the service; the reasons for the withdrawal of the housing service are irrelevant to the valuation of that service; the value of the garage originally constituted 13% of the tenant's total rent obligation, but the valuation determined by the



Administrative Law Judge constitutes 21% of the total rent, so the total rent for the unit is now 8% less than if the landlord had never rented the parking space to the tenant; and to restrict the amount of rent increases permitted for the unit but compensate for a withdrawn service at market level is unjust and confiscatory.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Gruber/Becker: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to grant a rent reduction in the amount of the contract rent for the parking space; the tenant can re-file the petition should the circumstances change and the landlord re-rents the parking space. (Gruber/Murphy: 4-1; Marshall dissenting)

E. 469 – 8<sup>th</sup> Ave.

AT010191

The tenant's petition alleging several decreased housing services was granted only as to a porch leak and rotted window frame, and the landlords were found liable to the tenant in the amount of \$1,430.00. The tenant appeals only as to the back stairs, claiming that cat feces render them unusable.

MSC: To deny the appeal. (Lightner/Gruber: 4-1; Becker dissenting)

F. 3 – 27<sup>th</sup> St.

AT010190

The tenant's Summary Petition was denied as to an allegation of unlawful rent increase because the Administrative Law Judge found that the tenant no longer permanently resides on the premises and, therefore, a rent increase was warranted pursuant to Costa-Hawkins. However, it was determined that the rent increase notice issued by the landlord was defective because it was served on other occupants at the property, and not served on the original tenants, who had not terminated their tenancy. The tenant appeals, claiming that the Administrative Law Judge erred by: determining the rights of other tenants who were not party to the petition nor present at the hearing; going beyond the scope of the Summary Petition; finding the tenant's testimony not to be credible; and determining that other occupants of the unit are not original tenants.

MSC: To accept the appeal and remand the case for a hearing; all occupants potentially affected by the decision shall be included. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

G. 5309-5311A Mission St.

AL010192

The tenants' petition alleging decreased housing services was granted, and the landlord was found liable to the tenants in the amount of \$2,668.50 due to habitability defects on the premises. On appeal, the landlord claims not to have received the Notice of Hearing, and also alleges that the decision presents him with a financial hardship.

MSC: To accept the appeal and remand the case for a new hearing. (Lightner/Gruber: 5-0)

H. 2310 Powell St. #305

AT010194



The landlord's petition for certification of capital improvement costs for 168 of 344 units was granted. Two tenants in one unit filed an appeal of the decision on the grounds of financial hardship. Pursuant to the agreement of the landlord, the Rent Board Commissioners voted to defer imposition of the passthrough for one year. The motion passed by the Board also provided that, if the tenants wished an extension of the deferral beyond the one-year period, they must file another Tenant Hardship Application by no later than December 1, 2001, which the tenants have done.

MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Becker/Gruber: 5-0)

I. 3330 Pierce St. #104

AT010193

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 15 units. The increase was denied as to the tenants in unit #104, because they had received a comparables rent increase effective April 1, 2001, a date which fell within Year 2 of the operating and maintenance expense petition. The landlord appealed only as to the denial of the increase to unit #104, asserting that the decision on the comparables rent increase established the base rent as of December, 1995, and factored in only annual increases since that time, which should not preclude an additional increase based on subsequent increased operating expenses. The Board accepted the appeal and remanded the case to the Administrative Law Judge to grant the operating and maintenance expense increase, based on the facts of this case. The tenants appeal the remand decision, asserting that: property taxes were omitted for a substantial portion of the base year; adequate documentation was not provided with the petition, which should have been dismissed; the comparison periods chosen did not allow for a fair comparison of costs and created exaggerated results; costs that had been passed through as a bond passthrough were included in the operating expense petition; debt service payments for only ten months were included in the base year; mortgage principal does not constitute an "actual cost"; the landlord should have been required to furnish income tax statements; costs for preparation of vacant units were included in the petition; monthly expense logs from the previous owner were purposely omitted; and Rules Section 6.11(a)(2) precludes an operating expense increase to this unit.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for any necessary Technical Corrections. (Gruber/Lightner: 5-0)

J. 747 Geary St., #504

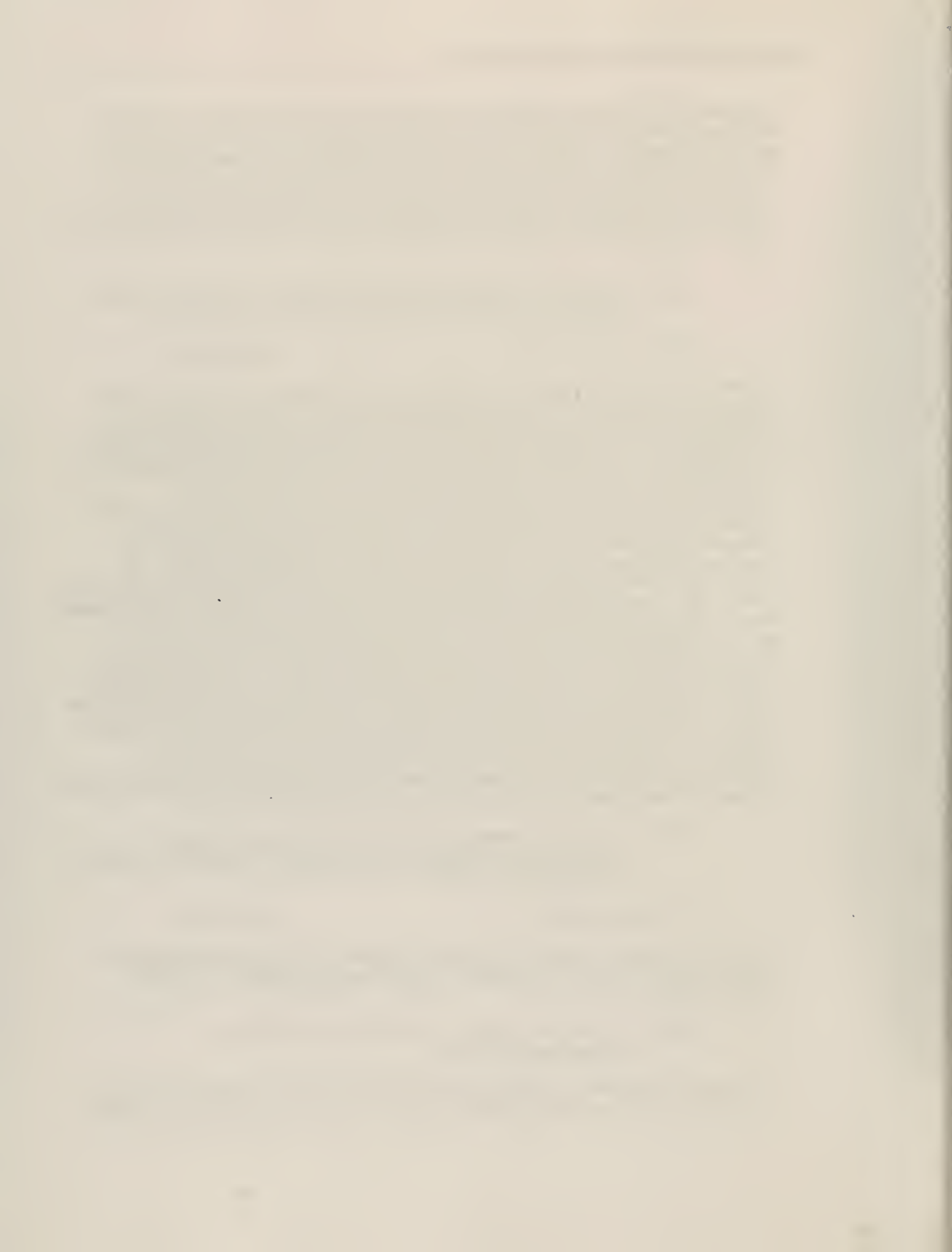
AT010195

The tenant's appeal was filed over one year late because the tenant alleges that multiple mental and physical disabilities interfered with her ability to fill out the requisite forms.

MSC: To find good cause for the late filing of the appeal. (Becker/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs to 16 of 22 units was granted. One tenant appeals the decision on the grounds of financial hardship.





MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

VI. Communications

The Commissioners received the following communications:

- A. The Appeal Decision in the case at 1320, 1340 & 1360 Lombard St., (AT010052 et seq.) which was heard and decided on November 13, 2001. Commissioner Gruber made a motion to approve the decision, which was seconded by Commissioner Lightner. However, Commissioner Marshall had some concerns regarding language in the decision regarding the question of deferred maintenance. Since Commissioner Justman was not at the meeting, and he had voted on the decision, Commissioner Wasserman asked that this matter be continued to the next meeting so that she could consult with Commissioner Justman.
- B. The office workload statistics for the month of November, 2001.
- C. A copy of the appellate decision in the case of Danekas v. Rent Board (Superior Court Case No. 310104; Court of Appeal No. A092400), in which the Court of Appeal denied the landlord's appeal and affirmed the trial court's ruling upholding Rules and Regulations Section 6.15A.

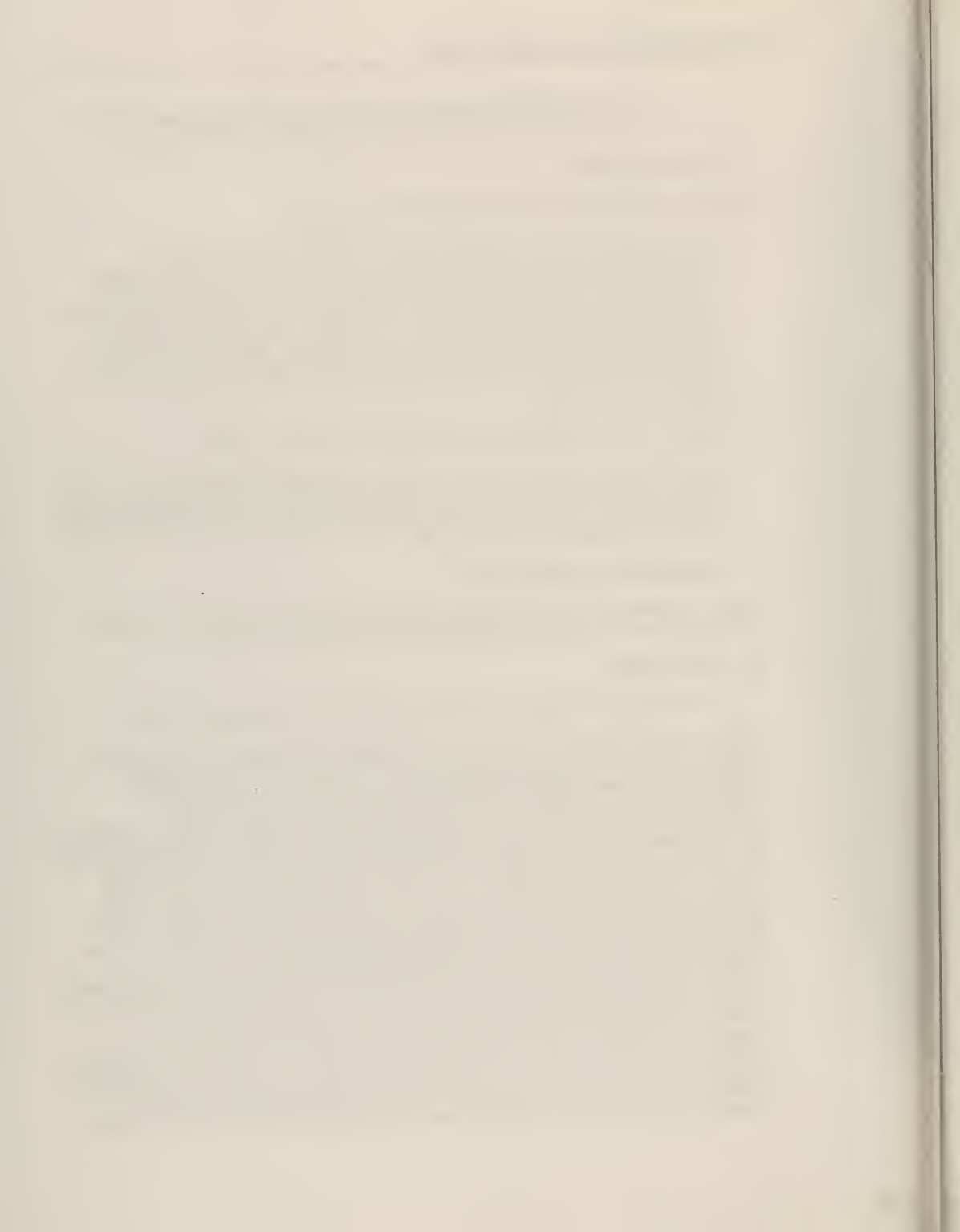
IV. Remarks from the Public (cont.)

Landlord appellant Greg Blaine asked which Technical Corrections to the decision would be made in the case at 3330 Pierce St. #104 (AT010193).

VII. Old Business

A. Proposed Amendment to Rules and Regulations Section 6.10(e)

The Board continued their discussion of a proposed amendment to Rules Section 6.10(e), pursuant to the Public Hearing held on October 16<sup>th</sup>. The proposed language would make it clear that only an owner who incurred an increase in expenses can file a petition for rent increase based on those expenses. Commissioner Lightner had previously voiced her concern that estates can't petition for increases based on the property tax reassessment triggered by the death of the owner because it takes so long for the supplemental tax bill to be issued by the City. At the meeting on December 4, 2001, the Board agreed that a possible approach to the problem might be to allow the estate to petition for property tax increases not yet received or paid, but which could be calculated pursuant to the applicable formula. However, Senior Administrative Law Judge Sandra Gartzman confirmed with the Property Tax Assessor's Office that the formula used for calculating supplemental taxes for subsequent purchasers would not be applicable here, since the formula relies in part on purchase price. While a representative of the estate can request an expedited appraisal of the property upon which the supplemental taxes will be calculated, it could take six months or more for such an appraisal to be conducted. If the estate does not own the property long enough to qualify for the operating and maintenance expense increase, an alternative would be for the estate to file the petition, obtain the increased sales price and assign the petition to the new owner. This issue will be discussed further at the next meeting.



B. Petition for Rules and Regulations Section 1.21 Determinations

This issue was continued to the next meeting.

VIII. New Business

Commissioner Murphy brought up the problem of packets being delivered too late for the Commissioners to adequately prepare for the meeting. It was agreed that for those three Commissioners who have been experiencing this problem, namely Lightner, Becker and Murphy, packets will be delivered by messenger. In the future, any Commissioner who wishes to may be added to this list.

IX. Calendar Items

January 15, 2002 - NO MEETING

January 22, 2002

7 appeal considerations (1 rescheduled from 1/8/02)

Old Business:

- A. Proposed Amendment to Rules and Regulations Section 6.10(e)  
(Goodwin v. Rent Board {Superior Court Case No. 317339})
- B. Petition for Rules & Regulations Section 1.21 Determinations

X. Adjournment

President Wasserman adjourned the meeting at 9:06 p.m.







SHARON K. WASSERMAN

PRESIDENT

02

POLLY MARSHALL

VICE-PRESIDENT

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# Residential Rent Stabilization and Arbitration Board

## NOTICE OF THE REGULAR MEETING THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.

MAYOR

Tuesday, 6:00 p.m.,

January 22, 2002

25 Van Ness Avenue, #70, Lower Level

JOSEPH GRUBB

EXECUTIVE DIRECTOR

### AGENDA

### DOCUMENTS DEPT.

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PUBLIC LIBRARY

01-18-02A11:40 RCVD

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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- V. Consideration of Appeals

A. 2195 Sacramento St.

AL010196

The landlord appeals the decision granting rent increases based on increased operating expenses but determining notices of rent increase to be null and void.

B. 1950 Clay St., Apt. 102

AL010197

The landlord appeals the determination that notices of rent increase issued pursuant to Rules and Regulations Section 1.21 and Costa-Hawkins were invalid.

C. 2526 Van Ness Ave. #11

AT010198

One tenant appeals the decision granting rent increases based on increased operating expenses.

D. 4042 California St.

AT010199

One tenant appeals the decision certifying capital improvement costs.

E. 1958 Golden Gate Ave. #3

AT010200

The tenant appeals the decision determining banked and annual rent increases to be valid.

F. 1109 Oak St.

AL010201



The landlord appeals the decision granting a claim of unlawful rent increase and finding that the building is not exempt as new construction.

G. 444 – 12<sup>th</sup> Ave.

AL010202

The landlord appeals the decision granting claims of unlawful rent increase and decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendment to Rules and Regulations Section 6.10  
(Goodwin v. Rent Board {Superior Court Case No. 317339})

B. Petition for Rules and Regulations Section 1.21 Determinations

IV. Remarks from the Public (cont.)

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IX. New Business

Rules and Regulations Section 6.15C(3)

X. Calendar Items

XI. Adjournment



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Tuesday, January 22, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

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LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
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ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:14 p.m.

II. Roll Call

Commissioners Present:	Becker; Lightner; Marshall; Wasserman.
Commissioners not Present:	Aung; Gruber; Hobson; Justman; Mosser.
Staff Present:	Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 8, 2002.  
(Becker/Marshall: 4-0)

IV. Remarks from the Public

A. Tenant Jacquelyn Loia of 4042 California St. (AT010199) told the Board that the work wasn't done until it constituted an emergency, so the costs were greater. Ms. Loia believes that necessary work should not be considered a capital improvement.

B. Tenant Christian Lackner of 2526 Van Ness Ave. #11 (AT010198) expressed his belief that the process by which the landlord's operating and maintenance expense petition was approved was "fraudulent." Mr. Lackner said that the landlord failed to meet his burden of proof, and that higher expenses for repairs incurred by the previous owner were wiped out.

C. Tenant Jeffrey Chase of 4042 California said that the work that was passed through was the result of deferred maintenance, and was less than adequate.

D. Kathleen Loia, a tenant at 4042 California from 1992 – 1997, said that she spoke to the landlord several times about the need for a paint job, but only a partial paint job was done 2-3 years later.

E. Mike Roper, who used to live at 4042 California, said that only the façade of the building was painted; the windows don't open and close; and the back stairs had to be replaced due to dry rot.





F. Dennis Fry, attorney for the landlord at 4042 California, said that several of the speakers were not tenants at the time the work was done, and that there was no evidence that costs increased due to deferred maintenance.

V. Consideration of Appeals

A. 2195 Sacramento St.

AL010196

(rescheduled from 1/8/02)

The landlords' petition for rent increases to 11 of 16 units based on increased operating expenses was granted. However, it was determined that notices of rent increase were null and void due to having been issued one month after a prior operating and maintenance expense increase had taken effect. On appeal, the landlords maintain that the effective date of the rent increases is mistakenly stated in the prior decision, and the notices of rent increase were not given prior to one year having elapsed; and that the base rent for unit #102 did not include additional amounts for storage and parking spaces. The landlords request that the case be remanded for technical corrections.

MSC: To recuse Commissioner Becker from consideration of this appeal.  
(Marshall/Lightner: 4-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge to allow the landlord to amend the petition in order to reflect the proper base rent for unit #102 and to determine the validity of the notices of rent increase; a hearing will be held only if necessary. (Lightner/Wasserman: 3-0)

B. 1950 Clay St., Apt. 102

AL010197

The landlord filed a petition requesting a determination as to whether the unit constituted the tenant's principal place of residence pursuant to Rules Section 1.21. The Administrative Law Judge found that the tenant was not a "tenant in occupancy" as defined in that Section, but that subtenants resided on the premises whose principal place of residence is the subject unit. Since the original tenant no longer permanently resides on the premises, the subtenants took up occupancy after January 1, 1996 and the subtenants are not there pursuant to an agreement with the landlord, a rent increase was found to be warranted pursuant to Costa-Hawkins. However, two notices of rent increase were determined to be defective because one was predicated on Section 1.21 although there are "tenants in occupancy" residing on the premises; and the Costa-Hawkins increase was served only on the subtenants, and not the original tenant. The landlord appeals the determination that the rent increase notices are defective, claiming that: the decision elevates form over substance, cites no legal authority; and is in disregard of State and local law, which does not require that there be a stated reason for a rent increase. The landlord also maintains that the landlord relied on defective information intentionally provided by the tenant and subtenants.

MSC: To accept the appeal and, based on the facts of this case, to remand to the Administrative Law Judge to find the rent increase valid as of the effective date of the second notice of rent increase, which was issued pursuant to Costa-Hawkins.  
(Marshall/Wasserman: 3-1; Becker dissenting)



C. 2526 Van Ness Ave. #11

AT010198

The landlord's petition for rent increases based on increased operating expenses to 8 of 12 units was granted. One tenant appeals the decision, claiming that: the landlord failed to meet the burden of proof regarding operating expenses in the base year; substantial repair costs incurred by the prior owner would serve to reduce or nullify the rent increases; and the Administrative Law Judge exhibited bias in favor of the landlord by deciding that repair costs were not established, which worked in favor of the landlord.

MSC: To deny the appeal. (Lightner/ Wasserman: 4-0)

D. 4042 California St.

AT010199

The landlords' petition for certification of capital improvement costs to the three units in the building was granted. On appeal, one tenant asserts that: the deteriorated condition of the building should have been taken into account in that the capital improvements actually constituted necessary repair; the partial patching of the roof was not a capital improvement; the exterior painting was done to prevent further damage to the building, and did not improve it; and the landlord was required to replace the rear stairs and windows, which had worsened due to deferred maintenance.

MSC: To deny the appeal. (Lightner/Wasserman: 4-0)

E. 1958 Golden Gate Ave. #3

AT010200

The landlord filed a petition seeking a determination of the proper base rent for the subject unit. The landlord had issued a notice of banked and annual rent increase, which the tenant argued was invalid due to a clause in the purchase agreement for the property which precludes the landlord from imposing any rent increases without a mutual agreement in writing between the parties. The Administrative Law Judge found that the purchase agreement established the initial base rent for the tenancy, but did not preclude future allowable annual increases. On appeal, the tenant asserts that: the decision violates a final judgment of the Superior Court; the contract makes no distinction between changes that are consistent with the purchase agreement and those that are inconsistent; the decision takes away part of the consideration he received for the sale of the building without compensation; the landlord waived the rent increase by continuing to accept the prior rent amount for 3 months prior to filing the petition; the hearing was unfair and violated due process; and the Rent Board does not have jurisdiction to decide whether the contract prohibited the landlord from raising the rent, which is a matter of State contract law.

MSC: To deny the appeal. (Lightner/Marshall: 4-0)

F. 444 - 12<sup>th</sup> Ave.

AL010202

The tenant's petition alleging unlawful rent increases, decreased housing services and the landlord's failure to repair was granted as to the rent increase and several decreased housing services claims. The landlord was found liable to the tenant in the amount of \$6,682.23 due to unlawful rent increases and \$2,301.25 due to habitability defects on the premises. On appeal, the landlord asserts that: the entire amount of the rent increases should not be null and void but, rather, he should be credited for the lawful amount in effect at the time; the amount requested by the



tenant was unfair; the cracked exterior front step was minor; he never received notice as to several of the conditions; there are factual errors in the decision; and he effectuated repairs when he was informed of the problems by having received the tenant's petition.

MSC: To deny the appeal. (Becker/Marshall: 4-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Board received the following communications:

A. The office workload statistics for the month of December, 2001.

B. The Board Appeal Decision in the case concerning 1320, 1340 & 1360 Lombard St. (AT010052 et seq.), which was approved by the Board and signed by President Wasserman.

C. A copy of the Order Denying Plaintiffs' and Petitioners' Motion for Peremptory Writ of Mandamus in the case of Bullard v. Rent Board (Superior Court Case No. 319025), in which the Judge found that Costa-Hawkins does not preempt the Rent Board's ability to determine the initial rent for non-comparable replacement units offered to tenants displaced by owner move-in evictions pursuant to Ordinance Section 37.9(a)(8)(iv).

#### VII. Director's Report

Executive Director Grubb informed the Board that he will be seeking an increase in the rental unit fee in order to fund the Department's proposed budget for next year. The proposed \$6.50 increase will bring the fee to \$22.50 for apartments and \$11.25 for residential hotel rooms. The factors necessitating the increase include: the need to fill two positions kept vacant last year because of workload demands; litigation costs; language access mandates requiring that the Department translate its forms and brochures into at least two additional languages; wage increases; a backlog of petitions due to the Temporary Moratorium on processing of capital improvement petitions having been lifted; and the Department's taking on resolution of residential hotel visitor fee disputes. Should the increase be approved, the Department will fill the vacant counselor position; hire one additional permanent Administrative Law Judge; and hire one temporary Administrative Law Judge to eliminate the backlog of capital improvement petitions in one year. To mitigate the budgetary impacts, the Department will give up its Information Tech position and contract out those services.

#### VIII. Old Business

A. Proposed Amendment to Rules and Regulations Section 6.10(e)

The Board continued their discussion of a proposed amendment to Rules Section 6.10(e), pursuant to the Public Hearing held on October 16<sup>th</sup>. The proposed language would make it clear that only an owner who incurred an increase in expenses can file a petition for rent increase based on those expenses. Commissioner Lightner had previously voiced her concern that estates can't petition for increases based on the property tax reassessment triggered by the death of the owner because it takes so long for the supplemental tax bill to be issued by the





City. If the estate does not own the property long enough to qualify for the operating and maintenance expense increase, an alternative would be for the estate to file the petition, obtain the increased sales price and assign the petition to the new owner. Commissioner Lightner proposed language to accomplish this purpose, which will be discussed further at the next meeting.

B. Petition for Rules and Regulations Section 1.21 Determinations

The Board continued their discussion of certain desirable changes to the form developed by staff for landlords' use in requesting determinations pursuant to Rules Sections 1.21 and/or 6.14 and Costa-Hawkins. The Board agreed that it should be clear on the petition form itself, as it is on the instruction sheet, that landlords do not have to file for 6.14 and/or Costa-Hawkins rent increases. There should also be a space for the listing of any persons who may claim a right to possession of the premises, including subtenants. Staff will incorporate these and certain other changes suggested by Commissioner Lightner.

IX. New Business

Rules and Regulations Section 6.15C(3)

Deputy Director Wolf informed the Commissioners that there had been an inquiry from a landlord attorney as to the Board's position on whether a Master Tenant who was paying less than their proportional share of the rent could be evicted for illegal use of the unit pursuant to Rules Section 6.15C(3). The Board asked that staff draft some proposed language to make clear that a tenant's failure to comply with the requirements of that section would not be a basis for eviction from the premises, for discussion at the next meeting.

X. Calendar Items

January 29, 2002 - NO MEETING

February 5, 2002

10 appeal considerations

Old Business:

- A. Proposed Amendment to Rules and Regulations Section 6.10(e)
- B. Rules and Regulations Section 6.15C(3)

XI. Adjournment

President Wasserman adjourned the meeting at 8:09 p.m.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, 6:00 p.m.,  
February 5, 2002  
25 Van Ness Avenue, #70, Lower Level

DOCUMENTS DEPT.

**AGENDA**

JAN 31 2002

SAN FRANCISCO  
PUBLIC LIBRARY

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

01-31-02A10:48 RCVD

**NOTE:** Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 3330 Pierce St. #305 AL020006

The landlord appeals the decision determining that the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21.

B. 1360 Lombard St. #403 AT020005

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1381 Utah St. #1 AT020004

The tenant appeals the dismissal of a petition alleging substantial decreases in housing services.

D. 1733 McAllister St., Apt. 5 AL020007

The landlord appeals the determination that the unit constitutes the tenant's principal place of residence despite the fact that he is attending a one-year graduate program.

E. 883 Sacramento St. AL020008

The landlord appeals the denial of a Petition for Extension of Time to Do Capital Improvement Work.

F. 322 Cumberland St. AL020010



The landlord appeals the decision partially granting claims of decreased housing services on jurisdictional grounds.

G. 740 Monterey Blvd. #111

AT020009

The tenant appeals to reopen a prior hardship decision.

H. 3972 & 3974 – 23<sup>rd</sup> St.

AT020012 & -13

The tenants appeal the decision certifying capital improvement costs.

I. 319 – 27<sup>th</sup> Ave. #3

AL020014

The landlord appeals the decision granting a claim of unlawful rent increase.

J. 1819 Golden Gate Ave. #12

AT020011

The tenant appeals the decision denying his claims of unlawful rent increase, decreased housing services and failure to repair.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendment to Rules and Regulations Section 6.10(e)

B. Rules and Regulations Section 6.15C(3)

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71-Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.







SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, February 5, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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MAR 15 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

President Wasserman called the meeting to order at 6:11 p.m.

II. Roll Call

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Commissioners Present: Aung; Becker; Gruber; Marshall; Murphy;  
Wasserman.  
Commissioners not Present: Hobson; Lightner; Mosser.  
Staff Present: Wolf.

Commissioner Justman appeared on the record at 6:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 22, 2002.  
(Becker/Murphy: 4-0; Gruber abstaining)

IV. Remarks from the Public

A. Robert Pender of the Parkmerced Residents' Organization (PRO) informed the Commissioners that tenants and representatives of PRO had attended 14 Rent Board hearings on the landlord's operating expense increase petition over the past year. PRO now has over 300 members and 20 Board members.

B. Tenant Ruby Gold of 3972 & 3974 - 23<sup>rd</sup> St. (AT020012 & -13) told the Board that the tenants hadn't attended the hearing on the landlord's capital improvement passthrough petition because of the events of 9/11.

C. Tenants Margaret Miyasaki and Jessie Richardson of 1381 Utah St. #1 (AT020004) informed the Board that they were in attendance at the meeting.

V. Consideration of Appeals

A. 3330 Pierce St. #305

AL020006

The landlord filed a petition seeking a determination as to whether the subject unit is exempt pursuant to Rules and Regulations Section 1.17(i) and/or 1.21. The Administrative Law Judge found that, although the tenants rent two units that are next door in the building, both units comprise the tenants' principal place of residence and are used for residential purposes. The landlord appeals the determination that both of the units are subject to Rent Board jurisdiction, claiming that: the language of



Section 1.21 describes a tenant in occupancy as residing in a single rental unit; the word "principal" does not allow for more than one; the tenants' use of both units does not convert them to one unit; and the tenants' behavior clearly favors one unit over the other.

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Murphy dissenting)

B. 1360 Lombard St. #403

AT020005

The tenant's hardship appeal was filed almost nine months late because he assumed that it was being taken care of by the attorney who filed a joint appeal on substantive issues for he and many other tenants in the building.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Marshall: 5-0)

The landlord's petition for certification of the costs of a large waterproofing project was granted. One tenant untimely appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

C. 1381 Utah St. #1

AT020004

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received notice of the hearing because mail delivery to the premises has been disrupted due to the landlord's removal of the mailbox in order to repair the stairs.

MSC: To accept the appeal and remand the case for a new hearing.  
(Becker/Marshall: 5-0)

D. 1733 McAllister St., Apt. 5

AL020007

The landlord filed a petition seeking a determination as to whether the tenant is a "tenant in occupancy" pursuant to Rules Section 1.21. The Administrative Law Judge found that the tenant's absence from the unit in order to attend a graduate program for a year constituted a reasonable temporary period of absence for education and that the unit remained the tenant's principal place of residence. The landlord appeals, asserting that: an individual cannot occupy a unit if they are not there for a year; a tenant cannot occupy a single occupancy unit if someone else is residing there; the requirements of Rules Section 1.21 should conform to the owner-occupancy eviction requirements of Ordinance Section 37.9(a)(8); the exceptions to the occupancy requirement of Section 1.21 should be limited to circumstances beyond the tenant's control, or brief absences; and, once the unit was sublet, the tenant was no longer a "tenant in occupancy."

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Murphy dissenting)

E. 883 Sacramento St.

AL020008



The landlord's Petition for Extension of Time to Do Capital Improvement Work was denied because: the landlord had a nine-month construction estimate at the time the notice to vacate was served on the tenants, but failed to file the Petition for Extension of Time until more than three months after the notice was served; and the landlord had failed to obtain all necessary permits prior to filing the petition. On appeal, the landlord claims that: the landlord petitioner appropriately relied on the requirements of Rules Section 12.15(e)(2), rather than 12.15(e)(1); the Administrative Law Judge exceeded his authority by denying the petition, rather than deciding on the reasonableness of the landlord's time estimate; and, since the landlord prevailed in an Unlawful Detainer action against these tenants, there is a judicial determination that the landlord's notice of termination of tenancy was in compliance with the Rent Ordinance.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine the reasonableness of the landlord's estimate of additional time needed to complete the work. (Becker/Marshall: 5-0)

F. 322 Cumberland St.

AL020010

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,708.50 due to habitability defects on the premises. On appeal, the landlord provides evidence that the lot has been split, and asserts that the property is now exempt from Rent Board jurisdiction pursuant to Costa-Hawkins in that it is a single family dwelling which is separately alienable from the title to any other dwelling.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine the effect of the lot split on the rent reductions granted in the Decision; a hearing will be held only if necessary. (Becker/Murphy: 5-0)

G. 740 Monterey Blvd. #11

AT020009

The landlord's petition for certification of capital improvement costs to 15 of 24 units was granted. The tenant appealed the decision on the grounds of financial hardship. The appeal was granted, and the capital improvement passthrough was ordered deferred for one year in order for the tenant's daughter to obtain employment. The remand decision provided that the tenant could file another financial hardship application after the one-year period had expired, should extraordinary circumstances warrant further deferral. The tenant now appeals to reopen the case, because her daughter's condition has worsened, and has made it impossible for her to work.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to have a hearing to consider all resources available to the tenant from family members and to consider additional sources of income available to the other tenant in the unit. (Justman/Marshall: 5-0)

H. 3972 & 3974 - 23<sup>rd</sup> St.

AT020012 & -13





The tenants' appeals were filed three days late because they relied on the postmark date rather than the date of issuance of the decision.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Marshall: 5-0)

The landlord's petition for certification of the costs of exterior painting of three of four buildings on the property was granted, resulting in a monthly passthrough to the tenants in the amount of \$33.35. On appeal, the tenants in two units claim that: the work done on the buildings varied, and should not have been equally allocated to the tenants; the contracts for the work do not reflect the work that was done; cleaning wood shingles does not constitute capital improvement work; scaffolding was used on all four buildings, but is only being charged to two; and, since the largest building was eliminated from the landlord's petition, the remaining buildings are being assessed a disproportionate share of the costs.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing on the issues raised in the appeal.  
(Becker/Marshall: 3-2; Gruber, Murphy dissenting)

I. 319 – 27<sup>th</sup> Ave. #3

AL020014

The tenant's petition alleging an unlawful increase in base rent from \$1,200 to \$1,900 per month was granted. The tenant had been receiving a voucher through the Section 8 Program, and terminated his participation in that program as of August 5, 2001. The landlord had issued a notice of rent increase conditioned on the approval of the Housing Authority to take effect August 1, 2001. Since the increase was not approved by the Housing Authority, the Administrative Law Judge found that it did not go into effect and the tenant's base rent upon coming under the jurisdiction of the Rent Board remained at the prior amount of \$1,200. The landlord appeals, contending that: the Rent Board lacks jurisdiction to adjudicate the validity of a rent increase sought while the unit was under Section 8; the landlord is entitled to the increase under Federal law; since the tenant terminated participation in Section 8 after the effective date of the rent increase, the holdover rent was at the last noticed rate; the tenant waived his rights to contest the increase; the Administrative Law Judge abused her discretion and failed to apply applicable facts and law; and the tenant should be estopped from contesting the increase because of his interference with the inspection necessary to obtain approval of the rent increase.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine whether the tenant acted in bad faith to interfere with the rent increase taking effect and, if so, to determine whether it would have taken effect absent the tenant's conduct. (Justman/Murphy: 4-1; Becker dissenting)

J. 1819 Golden Gate Ave. #12

AT020011

The tenant's petition alleging decreased housing services, unlawful rent increases and the landlord's failure to repair was denied. Specifically, the tenant maintains that the landlord should not be allowed to restore a \$200 rent reduction for a prior cockroach infestation because there are still cockroaches in the unit. On appeal, the tenant claims that: it is the landlord's burden to prove that the cockroach problem has been eliminated, which he has not done; the prior owner agreed not to ever restore the rent reduction in return for the tenant's waiving his right to sue for asbestos



exposure; his claim of being set up for eviction was not dealt with by the Administrative Law Judge; and the tapes of the hearing have been tampered with.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a copy of a revised petition for Rules Sections 1.21 and 6.14 and Costa-Hawkins determinations and an updated staff roster.

VII. Director's Report

Executive Director Grubb informed the Board that the second component of the Housing Study, the results of a survey that will be going out to the tenant and landlord communities soon, will be available in mid- to late March. Mr. Grubb also informed the Commissioners that legislation extending the Moratorium on eviction for non-payment of a Prop. H-affected capital improvement passthrough was approved by the Board of Supervisors on February 4, 2002. The legislation will extend the Moratorium on eviction for an additional year and prohibit the imposition of late fees for non-payment.

VIII. Old Business

Consideration of proposed amendments to Rules and Regulations Sections 6.10(e) and 6.15C(3) was continued to the next meeting.

IV. Remarks from the Public (cont.)

D. Tenant Yost Vandewater of 322 Cumberland (AL020010) expressed his confusion regarding the disposition of his landlord's appeal and said that he had been issued a retaliatory rent increase.

IX. New Business

Commissioner Murphy expressed his concern regarding the sums the agency expends on City Attorney fees. He asked if there are any guidelines or if the Board has any discretion regarding which cases are defended. Commissioner Gruber said that he had some questions concerning the departmental budget, having missed the Executive Director's presentation at the last meeting. Both of the above issues will be put on the Agenda for the next meeting.

X. Calendar Items

February 12 & 19, 2002 - NO MEETINGS

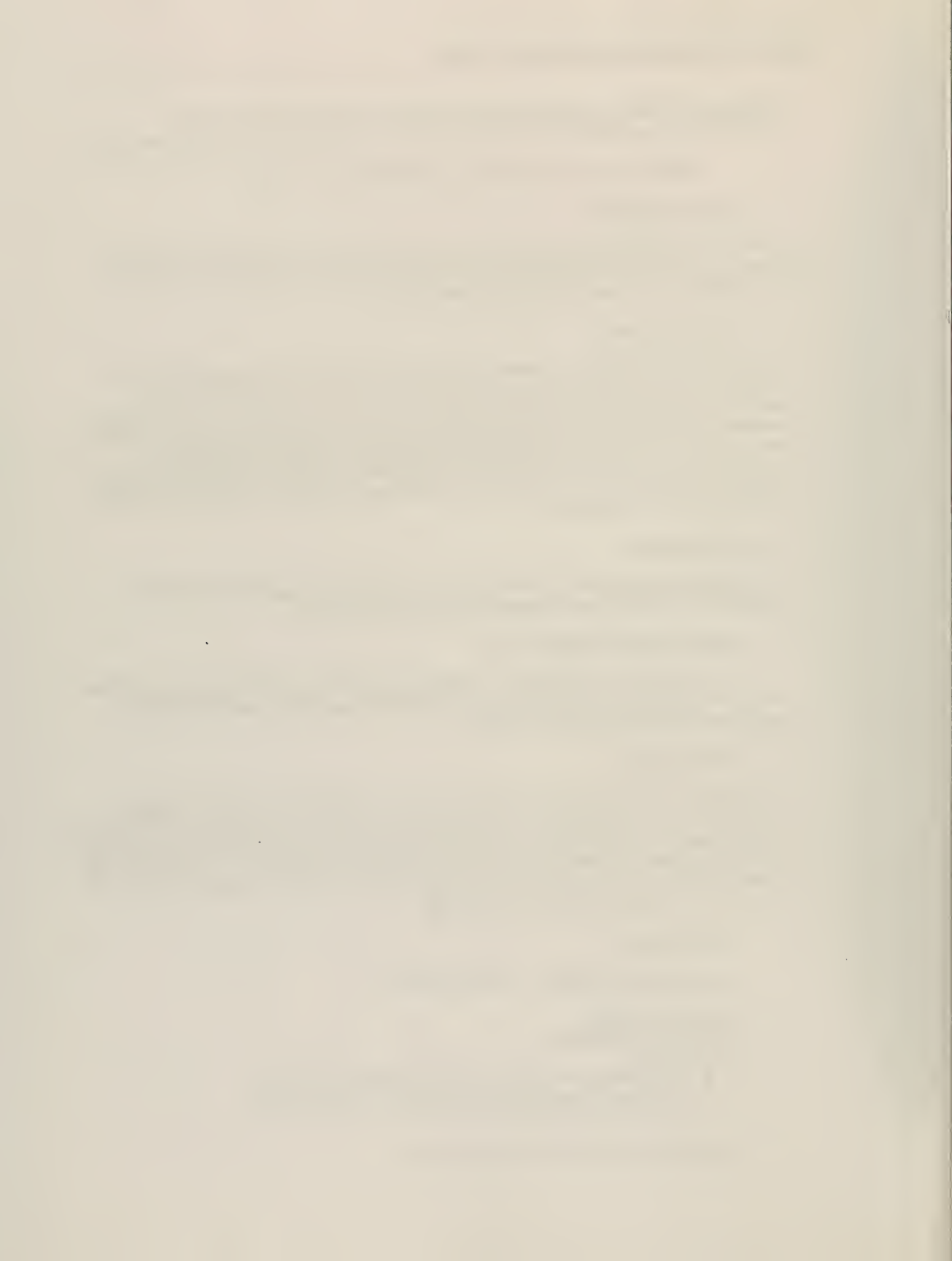
February 26, 2002

7 appeal considerations

Old Business:

- A. Proposed Amendments to Rules Section 6.10(e)
- B. Proposed Amendments to Rules Section 6.15C(3)
- C. Departmental Budget

March 5 & 12, 2002 - NO MEETINGS



XI. Adjournment

President Wasserman adjourned the meeting at 7:45 p.m.



**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
February 26, 2002

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

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FEB 13 2002

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PUBLIC LIBRARY

02-13-02A10:30 RCVD



SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
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KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

**NOTE:** Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 360 Hyde St. #103, 402, 403 & 407 AT020017 thru -20

Four tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

B. 1550 Bay St. AT020021 thru -73

Sixty-three tenants appeal the decision certifying capital improvement costs; fourteen on the grounds of financial hardship.

C. 1419 Kearny St. AT020015

The tenant appeals the determination that there are no "Tenants in Occupancy" on the premises pursuant to Rules and Regulations Section 1.21.

D. 2705 - 20<sup>th</sup> St. AL020076

The landlords appeal the decision granting a claim of unlawful rent increase.

E. 1035 Scott St. #B AT020016

One tenant appeals the decision granting certification of capital improvement costs.

F. 270 Turk St. #909 AT020075





One tenant appeals the decision granting certification of capital improvement costs on the grounds of financial hardship.

G. 757 Leavenworth #205, 402 & 605

AT020078 thru -80

Three tenants appeal the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 6.10(e)

B. Proposed Amendments to Rules and Regulations Section 6.15C(3)

C. Budget

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



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SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 26, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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LARRY BEACH BECKER  
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FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:15 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Justman; Marshall;  
Mosser; Murphy; Wasserman.  
Commissioners not Present: Hobson; Lightner.  
Staff Present: Gartzman; Grubb; Wolf.

Commissioner Marshall went off the record at 7:35 p.m.

III. Remarks from the Public

A. Oren Kendall, a tenant involved in a hardship appeal at 360 Hyde St. (AT020018), distributed a summary and view of the case and documents substantiating his hardship appeal.

B. Robert Pender, representing the Parkmerced Residents' Organization, said he was appearing to stand in solidarity with other tenants' organizations, since all tenants at large complexes are facing the same problem of being forced out of their homes by "greedy speculators."

C. Arnold Cohn, a tenant at 1550 Bay St. (AT020035), said that the issue in his case is not one of repairing a building but, rather, of changing the nature of the building from long-term residency to short-term, corporate rentals. Mr. Cohn believes that the Decision of the Administrative Law Judge should be overturned.

D. Robert St. Luccia, a hardship appellant at 270 Turk #909 (AT020075), informed the Board that he is on SSI/SSA and has health problems.

IV. Consideration of Appeals

A. 360 Hyde St. #103, 402, 403 & 407

AT020017 thru -20

The tenant in unit #403 filed his appeal 8 days late because he was staying at his sister's home in the East Bay until the end of the school semester, and he had a hard time understanding the decision as English is not his native language.



MSC: To find good cause for the late filing of the appeal. (Becker/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs and rent increases based on increased operating expenses to 30 of 41 units was granted. Four tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit #103 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #402 and remand the case for a hearing on the tenants' claim of financial hardship; a separate Hardship Application for the tenant's wife must be provided by the time of the hearing. (Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenant in unit #407 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

MSC: To deny the appeal of the tenant in unit #403. (Murphy/Gruber: 5-0)

B. 1550 Bay St.

AT020021 thru -73

The tenant in unit #B125 filed his appeal form 40 days late because he was out of town taking care of his mother who has cancer. His name is listed on the joint appeal and he is represented by the same attorney as 47 other tenants.

MSC: To find good cause for the late filing of the appeal. (Becker/Marshall: 5-0)

The tenant in unit #B420 filed his appeal form 15 days late because English is not his native language and he commutes to Los Angeles for work. His name is listed on the joint appeal and he is represented by the same attorney as 47 other tenants.

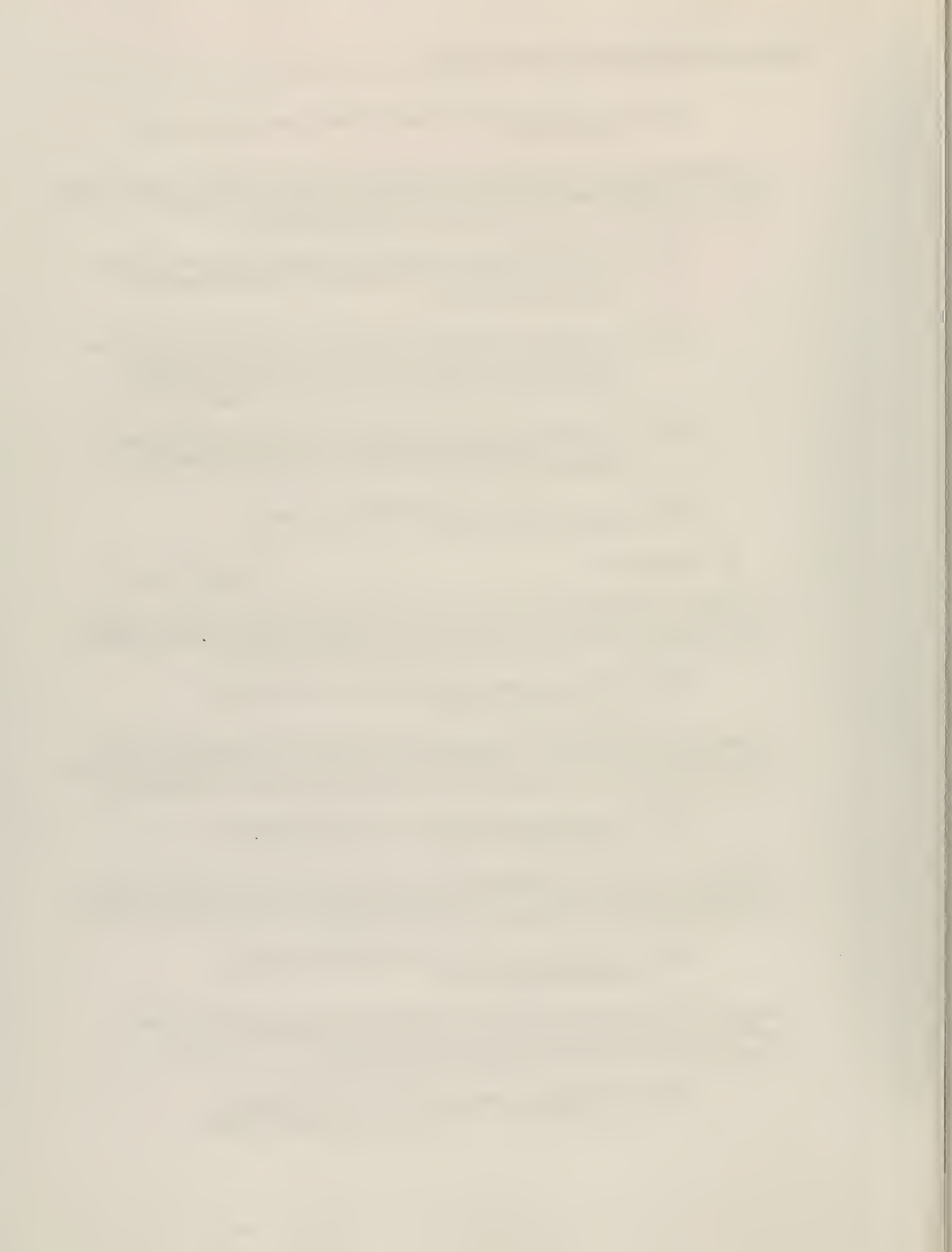
MSC: To find good cause for the late filing of the appeal. (Becker/Marshall: 5-0)

The tenant in unit #C146 filed his appeal form six days late he was extremely ill and bedridden during the appeal period. His name is listed on the joint appeal and he is represented by the same attorney as 47 other tenants.

MSC: To find good cause for the late filing of the appeal. (Becker/Marshall: 5-0)

The tenant in unit #D258 filed her appeal 20 days late because she is currently working at a seasonal job, and her mail was not forwarded to her. She is represented by the same attorney as 47 other tenants.

MSC: To find good cause for the late filing of the appeal. (Marshall/ Becker: 3-2; Gruber, Murphy dissenting)





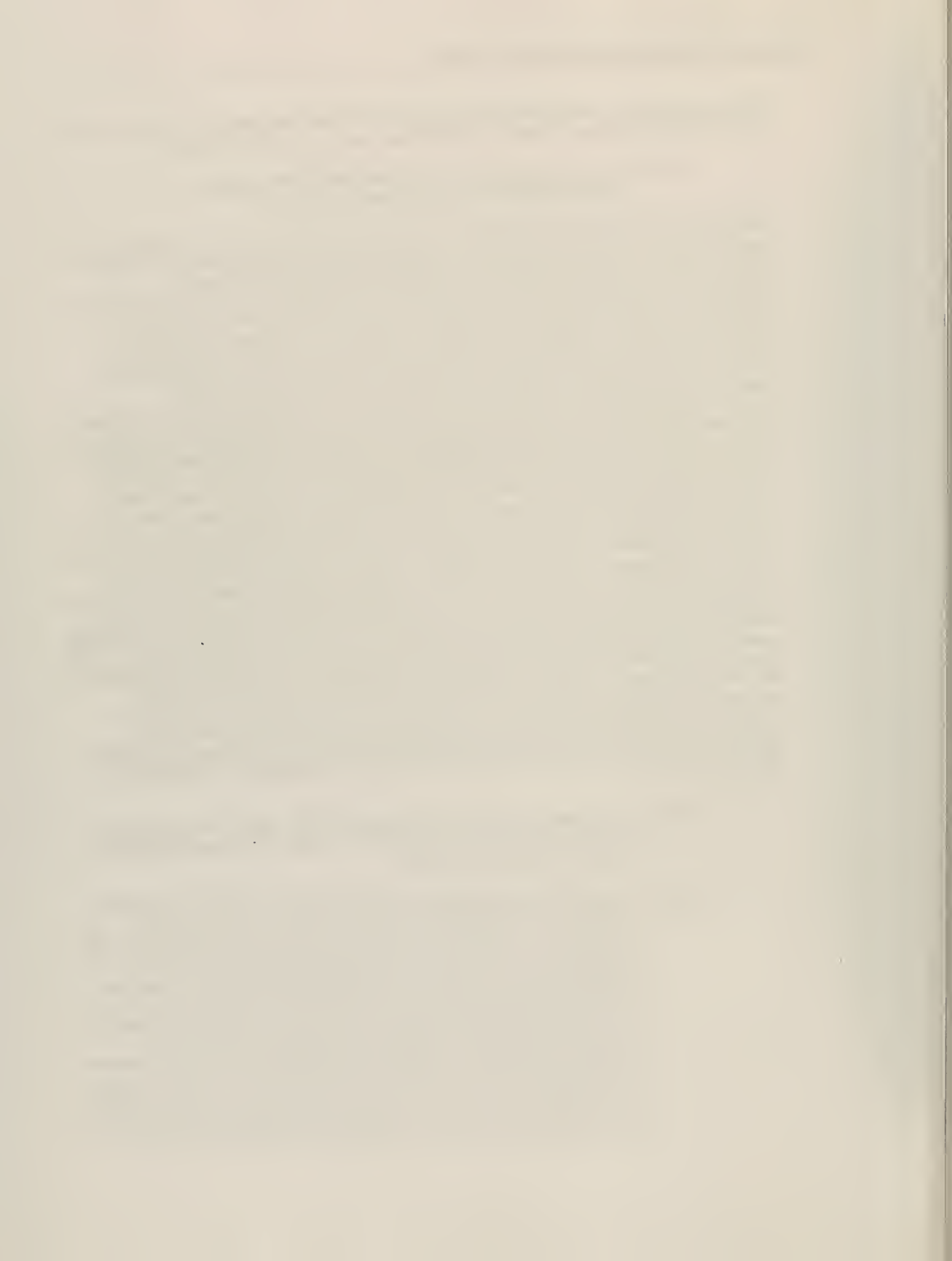
The prior tenant in unit #D454 filed his appeal 18 days late because he has moved twice since living at the premises, and his mail was forwarded to him late.

MSC: To find good cause for the late filing of the appeal.  
(Marshall/Becker: 4-1; Gruber dissenting)

The landlord's petition for certification of capital improvement costs, including a large waterproofing project, to 94 out of 241 units was granted in the amount of almost \$3,200,000.00. Fifty-three tenants appeal the decision: 48 tenants are represented by the same attorney, and filed a joint appeal; 14 tenants (including 9 tenants represented by the same attorney and 5 unrepresented tenants) filed individual appeals on the grounds of financial hardship; and one tenant filed an individual appeal (in addition to filing as part of the joint appeal), maintaining that Rules and Regulations §7.12(b) (the 6-Month Rule) bars the imposition of the passthrough to his unit. The tenants filing the joint appeal argue that: the passthrough is barred in its entirety by Proposition H; a payment schedule should be implemented because of the length of time it took to process this case, and the resulting large retroactive amounts owed by the tenants; the capital improvement passthroughs should be stayed pending the issuance of a decision on pending tenant petitions alleging decreased housing services; costs for the exterior wall covering should have been allocated to the commercial, as well as residential, units; and the ratio of commercial to residential space is not accurately depicted in the decision. The tenant in unit #C341 asserts that the passthrough should be barred to his unit by Rules and Regulations Section 7.12(b) because the landlord had a contractual agreement to buy the building and was already involved in the setting of the rents at the time he moved in, so the exception to the 6-Month Rule for new owners should not apply; and that it was unfair for the landlord not to disclose that the waterproofing project was about to be undertaken prior to the tenant moving in. The tenant in unit #341 also requests that he be allowed to submit a hardship application should his appeal be denied. The tenants in the following units appeal on the grounds of financial hardship: B112; B318; B412; B416; B430; C135; D163; D249; D251; D258; D353; D358; and D452. The prior tenant of unit #D454 appeals on the grounds of financial hardship and because he believes that tenants should not be penalized for improvements that were made without the tenants' approval.

MSC: To not consider the late submission introduced by the tenants at the Board meeting on February 26, 2002 (Murphy/Gruber: 3-2; Becker, Marshall dissenting)

MSC: To deny the joint appeal filed by the tenants on the issues of the applicability of Proposition H, the request to stay the capital improvement passthroughs pending issuance of a decision on the decrease in services petitions filed by some tenants, and the allegation that "exterior wall" costs attributable to commercial areas in the building were improperly allocated to the residential units. To grant the joint appeal filed by the tenants and remand the case to the Administrative Law Judge for a hearing on the issue of allocation of the costs of installing waterproofing materials between the ceiling of the commercial units and the floor of the twelve tenant decks above the ceiling of the commercial units; to determine the use of the old laundry room space as of the date of the close of the record, or March 30, 2001, for purposes of allocation of those



costs; and to establish a repayment schedule for sums owing from the tenants to the landlord. (Justman/Marshall: 5-0)

MSC: To deny the individual appeal filed by the tenant in unit #C341. However, the tenant may file an appeal on the grounds of financial hardship within 15 days of the mailing of the Notice of Action on Appeal. (Murphy/Gruber: 4-1; Marshall dissenting)

MSC: To deny the hardship appeal of the tenant in unit #B112. (Becker/Aung: 5-0)

MSC: To accept the appeal of the tenant in unit #B318 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 4-1; Gruber dissenting)

MSC: To accept the appeal of the tenant in unit #B412 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Justman: 5-0)

MSC: To accept the appeal of the tenant in unit #B416 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 4-1; Gruber dissenting)

MSC: To accept the appeal of the tenant in unit #B430 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Justman: 4-1; Gruber dissenting)

MSC: To accept the appeal of the tenants in unit #135 and remand the case for a hearing on the tenants' claim of financial hardship. (Becker/Aung: 5-0)

MSC: To accept the appeal of the tenant in unit #D163 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Justman: 5-0)

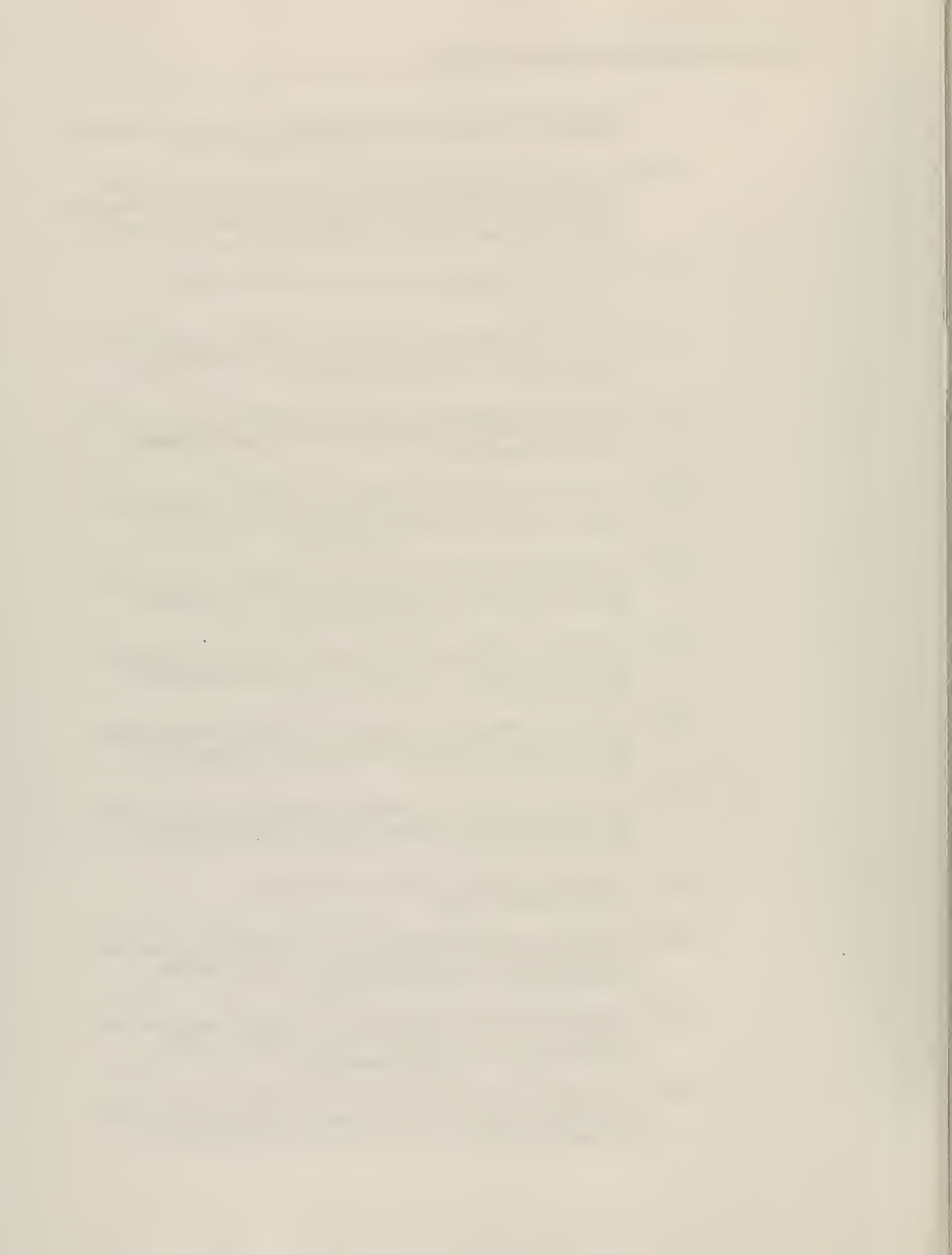
MSC: To accept the appeal of the tenant in unit #D249 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 5-0)

MSC: To deny the appeal of the tenant in unit #D251. (Gruber/Murphy: 5-0)

MSC: To accept the appeal of the tenant in unit #D258 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 4-1; Gruber dissenting)

MSC: To accept the appeal of the tenant in unit #D353 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 4-1; Gruber dissenting)

MSC: To accept the appeal of the tenant in unit #D358 and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 5-0)



MSC: To deny the appeal of the tenant in unit #D452.  
(Gruber/Murphy: 5-0)

MSC: To accept the appeal of the tenant in unit #D454 and remand the case for a hearing on the tenant's claim of financial hardship only.  
(Murphy/Gruber: 3-2; Aung, Becker dissenting)

C. 1419 Kearny St.

AT020015

The landlord filed a petition seeking a determination as to whether any of the tenants are "Tenants in Occupancy" pursuant to Rules Section 1.21 and whether the landlords are entitled to a rent increase under Costa-Hawkins or Rules Section 6.14. The Administrative Law Judge found that the original tenant does not reside in the unit as his principal place of residence. Further, there were no other "tenants in occupancy" at the time the petition was filed. Therefore, a rent increase was found to be justified under Rules and Regulations §1.21. Additionally, at the time the notice of rent increase was served, a subtenant resided on the premises who moved in after January 1, 1996. Therefore, a rent increase was found to be warranted under Costa-Hawkins. The tenant appeals, claiming that: the Administrative Law Judge was biased because he knew and had gone to school with the landlord; enough time was not provided in order to obtain documentary evidence and dispute evidence entered into the record by the landlord; and the Administrative Law Judge made inquiries that were irrelevant.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

D. 2707 – 20<sup>th</sup> St.

AL020076

The tenant's petition alleging unlawful rent increase was granted and the landlords were found liable to the tenant in the amount of \$8,917.00. On appeal, the landlords maintain that: even with the unlawful rent increase, the tenant paid \$7,472 less than the amount deemed fair under Federal Anti-Inflation Guidelines; it is unfair for the tenant to obtain retroactive reimbursement when the landlords cannot; the landlords took over payment of the water bill, for which the tenant had previously been liable; the landlords improved the unit over the course of the tenancy without passing on any capital improvement costs; and the outcome of this Decision does not comport with the stated mission of the Ordinance.

MSC: To deny the appeal. (Becker/Aung: 3-2; Gruber, Murphy dissenting)

E. 1035 Scott St. #B

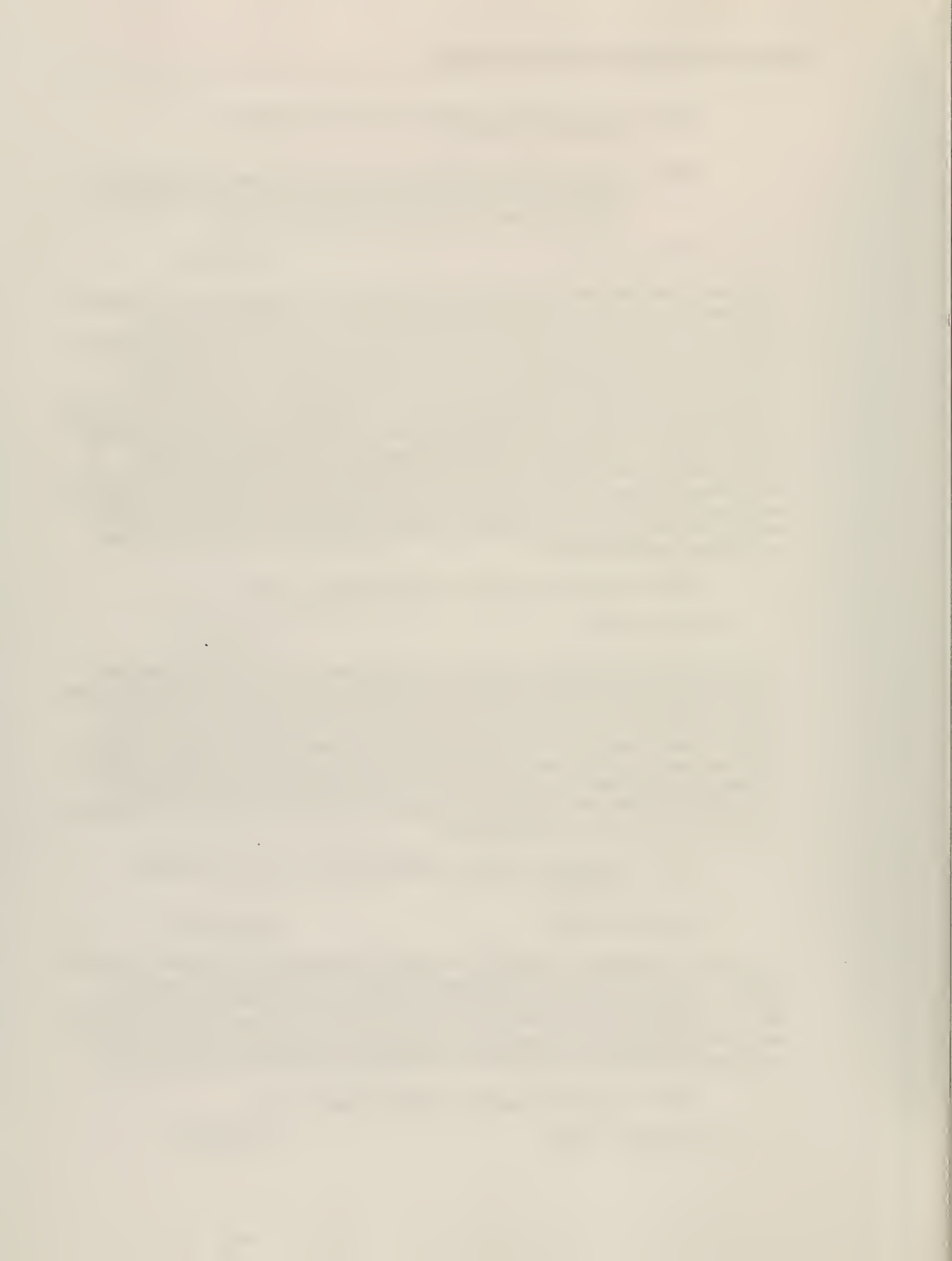
AT020016

The landlord's petition for certification of capital improvement costs to 4 of 6 units was granted, in part, resulting in a monthly passthrough to the tenants in the amount of \$20.22. One tenant appeals the decision on the grounds that: the replacement of the smoke detectors was unnecessary; a hole was left in the wall after the removal of the old smoke detector; the tenants are not benefited by the attic insulation; and the tenant had installed a new mailbox two months earlier, which was never returned.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

F. 270 Turk St. #909

AT020075



The landlord's petition for certification of the costs of replacing the elevator to 55 of 86 units was granted, resulting in a monthly passthrough to the tenants in the amount of \$23.57. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 5-0)

G. 757 Leavenworth #205, 402 & 605

AT020078 thru -80

The tenant in unit #605 filed his appeal three days late because he has been ill and unable to attend to his mail.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Aung: 5-0)

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 24 of 38 units. Three tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit #205 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Aung: 5-0)

MSC: To accept the appeal of the tenant in unit #402 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Aung: 4-1; Gruber dissenting)

MSC: To accept the appeal of the tenant in unit #605 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Aung: 5-0)

### III. Remarks from the Public (cont.)

E. Robert Pender introduced the new President of PRO, Vicki Mack, as well as Jacqui Dozier of PRO, and said that they will be attending future Board meetings.

### V. Communications

The Board received several pieces of correspondence concerning cases on the calendar.

### VI. Old Business

#### A. Proposed Amendments to Rules and Regulations Section 6.10(e)

The Board continued their discussion of a proposed amendment to Rules Section 6.10(e), pursuant to the Public Hearing held on October 16<sup>th</sup>. The proposed language would make it clear that only an owner who incurred an increase in expenses can file a petition for rent increase based on those expenses. At the time of the Public Hearing, Commissioner Lightner expressed a concern that estates are not able to petition for increases based on the property tax reassessment triggered by the death of the owner because it takes so long for the supplemental tax bill to







be issued by the City. In order to address this concern, staff proposed the following additional language:

6.10(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such expenses may file a petition under this Section, and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice. In no event shall the petition be denied solely due to the subsequent transfer of the property, unless the successor in interest declines to substitute in as the petitioner.

Note: Original additions are in single underline. New additions are in double underline.

MSC: To put the proposed language out for Public Hearing.  
(Becker/Aung: 5-0)

The Public Hearing will be on March 19<sup>th</sup> at 6:00 p.m.

B. Proposed Amendments to Rules and Regulations Section 6.15C(3)

Discussion of this issue was continued to the March 19<sup>th</sup> meeting.

C. Budget

Executive Director Grubb went over the proposed departmental budget for next year, and explained the reasons necessitating the \$6.50 increase for residential units. Commissioner Gruber expressed his concern over an almost 30% increase over last year's budget. Commissioner Murphy asked if the Department could exercise discretion over which lawsuits the agency should defend, since litigation costs due to voter-approved Initiatives and legislation passed by the Board of Supervisors come out of the department's budget. Mr. Grubb explained that the Department is required to pay to defend any challenges to the Rent Ordinance and that the other cost increases, such as raises negotiated with City employee unions, are also mandatory and outside of the Department's control.

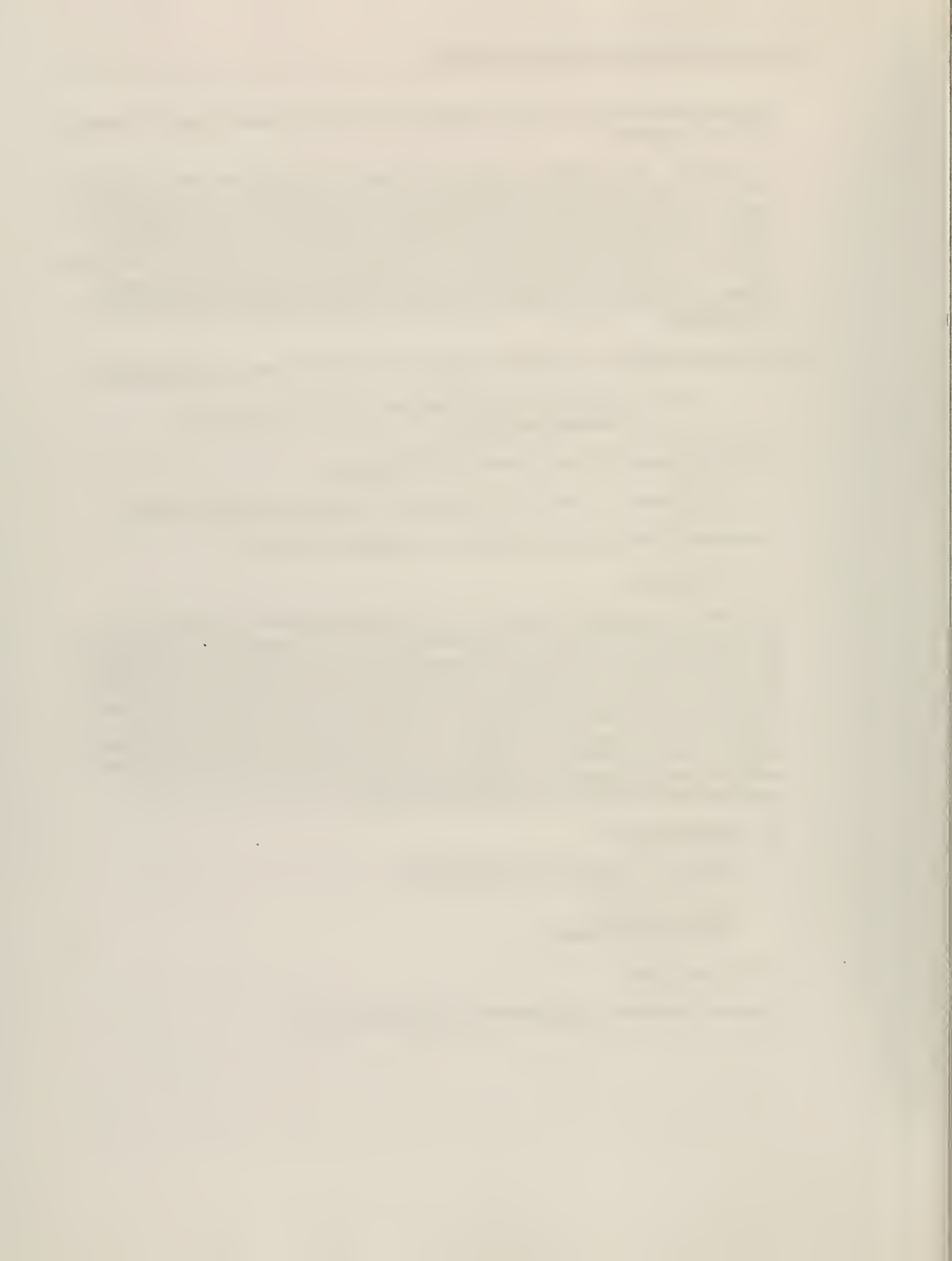
VII. Calendar Items

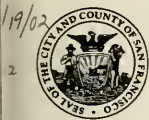
March 5 & 12, 2002 - NO MEETINGS

March 19, 2002  
8 appeal considerations

VIII. Adjournment

President Wasserman adjourned the meeting at 9:15 p.m.





March 5, 2002

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

**NOTICE OF PUBLIC HEARING**

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

DATE: MARCH 19, 2002

TIME: 6:00 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)  
SUITE 70, LOWER LEVEL  
SAN FRANCISCO, CALIFORNIA

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ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE ATTACHED LANGUAGE AMENDING SECTION 6.10(e) TO SPECIFICALLY STATE THAT ONLY THE OWNER WHO ACTUALLY INCURRED THE EXPENSE OF A REFINANCE OR A NEW PURCHASE DEBT SERVICE MAY PETITION FOR A RENT INCREASE UNDER SECTION 6 OF THE RULES AND REGULATIONS. PLEASE NOTE THAT NEW WORDING IS UNDERLINED AND ANY DELETIONS ARE IN DOUBLE BRACKETS [ [ ] ].

Section 6.10(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such increased expenses may file a petition under this Section, and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice. In no event shall the petition be denied solely due to the subsequent transfer of the property, unless the successor in interest declines to substitute in as the petitioner.

Comments may be mailed and should be **received** at the Rent Board no later than March 12<sup>th</sup> so that they can be mailed and received by the Commissioners prior to the hearing. Comments arriving after this time may not be able to be adequately considered. Comments may also be made in person at the hearing and will be limited to three minutes per person.







**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
March 19, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

**DOCUMENTS DEPT.**

- I. Call to Order  
KHIN MAI AUNG
- II. Roll Call  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER
- III. Approval of the Minutes  
FREDERICK HOBSON  
ANTHONY JUSTMAN
- IV. Remarks from the Public  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

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**NOTE:** Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Public Hearing
- 6:00 Proposed Amendments to Rules and Regulations Section 6.10(e)
- VI. Consideration of Appeals

A. 2340 Filbert St. #11 AT020081

The tenant appeals the decision determining that he is not a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

B. 3715 Scott St. AT020082

The tenant appeals the remand decision denying a claim of unlawful rent increase pursuant to Rules and Regulations Section 6.14.

C. 17 Decatur St. #1-8 AL020084

The landlord appeals the decision denying a Petition for Extension of Time to Do Capital Improvement Work.

D. 572 San Jose Ave. AT020085

The tenant appeals the remand decision denying his claim of financial hardship.

E. 1345-47 - 25<sup>th</sup> Ave. AL020086

The tenant appeals the remand decision denying his financial hardship appeal.



F. 2330 Larkin, Apt. 32

AL020083

The landlord appeals the decision granting rent reductions due to decreased housing services.

G. 817 Clay St. #10

AL020077

The landlord appeals the portion of the decision denying certification of capital improvement costs to one unit because of the "6-Month Rule."

H. 335 & 337 Waller St.

AL020087

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

VII. Communications

VIII. Director's Report

IX. Old Business

Proposed Amendments to Rules and Regulations Section 6.15C(3)

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

X. New Business

XI. Calendar Items

XII. Adjournment





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MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, March 19, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Wasserman called the meeting to order at 6:09 p.m.

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II. Roll Call

Commissioners Present

Becker: Gruber: Lightner: Marshall:  
Wasserman

Commissioners not Present  
Staff Present.

Hobson: Mosser: Murphy  
Grubb; Wolf.

Commissioner Justman appeared on the record at 6:14 p.m.; Commissioner Aung arrived at the meeting at 6:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 5<sup>th</sup> and February 26, 2002.  
(Becker/Gruber: 4-0)

IV. Remarks from the Public

A. Jose Morales, the tenant involved in the hardship appeal at 572 San Jose Ave. (AT020085), told the Board that he has been a tenant in San Francisco for over thirty years, and has seen continuous abuses by landlords. Mr. Morales believes that "greedy landlords listen to the devil and don't care about their brothers and sisters." He warned the Board that legislation is being considered that would change the method by which Commissioners are appointed, and result in the current Board members losing their seats.

B. Robert Pender, Vice-President of the Parkmerced Residents' Organization (PRO), told the Board that twelve members of the PRO Board of Directors were in attendance at the meeting. He said that PRO was appearing in support of the proposed amendments to Rules and Regulations Section 6.10(e).

C. Gil Dowd, representing the landlord in the appeal concerning 817 Clay St. #10 (AL020077), said that the landlord just wants to "sit down and get justification for application of the 6-Month Rule."

V. Public Hearing

Proposed Amendment to Rules and Regulations Section 6.10(e)  
Goodwin v. Rent Board (Superior Court Case No. 317339)



A Public Hearing on a proposed amendment to Rules and Regulations Section 6.10(e) commenced at 6:15 p.m. and concluded at 6:25 p.m. The proposed language would make it clear that only an owner who incurred an increase in expenses can file a petition for rent increase based on those expenses. Language had been put out for consideration at a Public Hearing on October 16<sup>th</sup>. At the time of the Public Hearing, Commissioner Lightner expressed a concern that estates are not able to petition for increases based on the property tax reassessment triggered by the death of the owner because it takes so long for the supplemental tax bill to be issued by the City. In order to address this concern, staff proposed the following additional language:

6.10(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such expenses may file a petition under this Section, and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice. In no event shall the petition be denied solely due to the subsequent transfer of the property, unless the successor in interest declines to substitute in as the petitioner.

(Original additions are in single underline. Additional additions are in double underline.)

The following persons addressed the Board regarding the proposed changes:

1. Carolyn Cahn, a PRO Board member, asked whether the proposed amendment applies to corporations who repeatedly buy and sell properties and keep petitioning for rent increases.

2. Genevieve Callejo, a PRO Board member, explained the situation that the tenants at Parkmerced are facing. The property was purchased in July of 1999, but the new owners have recently sold a portion of the property. The tenants are currently facing an O&M increase based on the 1999 purchase, and fear that there will be another petition filed by the new owner. Ms. Callejo believes that "corporations churn property for profit."

3. Robert Pender of PRO read a statement in support of the proposed amendment, which was signed by several of the members of PRO's Board of Directors.

After listening to public comment, the Board voted as follows below:

MSC: To adopt the proposed amendments to Rules and Regulations Section 6.10(e). (Marshall/Becker: 5-0)

## VI Consideration of Appeals

A. 2340 Filbert St. #11

AT020081

The landlord's petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21 was granted and it was found that the subject unit does not constitute the tenant's principal place of residence. However, since the unit does constitute a subtenant's principal place of



residence, no rent increase was found to be warranted. The tenant appeals, maintaining that: it was unnecessary for the Administrative Law Judge to issue a determination as to whether the unit is the tenant's principal place of residence since there is a subtenant on the premises and the rent increase was denied on that basis; the finding that the unit is not the tenant's principal place of residence could have collateral estoppel effect in a future proceeding; Rules and Regulations Section 1.21 is in excess of the authority of the Rent Board, and cannot be enforced; the tenant meets four of the five indicia to show that the unit is his principal place of residence; and absences for employment are permissible

MSF To deny the appeal and to make clear that the tenant was not a "Tenant in Occupancy" at the time the petition was filed  
(Justman/Marshall: 2-3; Becker Gruber, Lightner dissenting)

MSC To deny the appeal (Lightner/Gruber 3-2; Becker, Marshall dissenting)

B 17 Decatur St #1-6

AL020084

The landlord's Petition for Extension of Time to Do Capital Improvement Work was denied because the Administrative Law Judge found that the petition was not timely filed and not properly completed, and that the landlord's time estimate to complete the work was unreasonable. On appeal, the landlord asks that the case be remanded with instructions that the finding that the landlord demonstrated a lack of good faith be stricken from the decision. The landlord contends that this conclusion is not supported by the evidence in the record, that the landlord was not aware that they needed to produce evidence on this point, and that the conclusion is unnecessary and prejudicial.

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

C. 572 San Jose

AT020085

The landlord's petition for a rent increase based on increased operating expenses was granted. The tenant filed an appeal based on financial hardship, which was accepted and remanded for hearing. In the Decision on Remand, the Administrative Law Judge found that the tenant had failed to prove sufficient financial hardship to warrant deferral of the operating expense increase. The tenant appeals, claiming that: working reduced hours is not elective on his part; the tenant should be allowed to file another hardship appeal at a later date should his health decline; and the tenant should not be forced to become a landlord by having to rent out the other bedroom in the unit.

MSC: To deny the appeal except to allow a reopening of the hardship appeal as to the operating and maintenance expense increase only if the tenant obtains a roommate who pays a proportional share of the rent but finds himself experiencing financial hardship due to health or other difficulties at a future time. (Lightner/Justman: 3-2; Gruber, Becker dissenting)

D. 2330 Larkin, Apt. 32

AL020083







The tenant's petition alleging substantial decreases in housing services was granted and the landlord was found liable to the tenant in the amount of \$2,250.00 due to a faulty window and leaking refrigerator. On appeal, the landlord asserts that: the tenant failed to meet her burden of proof; there is nothing wrong with the window or the refrigerator; and it is the tenant's fault that she has not yet been provided with a replacement refrigerator.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

E. 817 Clay St. #10

AL020077

The landlord's appeal was filed six months late because information regarding the tenancy was not available to the landlord at the time of issuance of the decision.

MSC: To find good cause for the untimely filing of the appeal  
(Becker/Lightner: 5-0)

The landlord's petition for certification of the costs of seismic retrofit of the building to six units was granted. However, the costs were disallowed to the tenants in unit #10 because the Administrative Law Judge found that the tenancy in that unit commenced after completion of the work. On appeal, the landlord claims that there has been no change in the tenancy but, rather, the wife is now paying the rent subsequent to the death of her husband.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine whether the costs of the seismic retrofit work should be disallowed for unit #10 pursuant to the 6-Month Rule. (Lightner/Justman: 5-0)

F. 335 & 337 Waller St.

AL020087

The landlord filed a petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" as contemplated by Rules and Regulations Section 1.21. The Administration Law Judge found that the tenant uses two separate units in the building jointly as his principal place of residence and that no rent increase was therefore warranted. The landlord appeals, asserting that the tenant lives in one unit and uses the other exclusively for work purposes; and that it is inequitable to allow the tenant to claim two separate flats as his principal place of residence, when owners are only allowed to have one principal place of residence pursuant to Ordinance Section 37.9(a)(8).

MSC: To deny the appeal. (Becker/Marshall: 4-1; Gruber dissenting)

G. 3715 Scott St.

AT020082

The tenant's petition alleging an unlawful increase in rent from \$1,625.00 to \$2,500.00 was granted because the Administrative Law Judge found that a 6.14 notice issued by the landlord was not timely served. The landlord appealed the decision, maintaining that the tenant's last name and bank are the same as the prior tenant's, so her rent checks did not serve to provide actual notice of her occupancy; and that he had always treated the tenant as a subtenant. The landlord's appeal was accepted and the case was remanded to the Administrative Law Judge with instructions to vacate the decision and find that the 6.14 notice was timely served. The tenant appeals the remand decision, contending that: the July 2, 1996 version



of Rules Section 6.14 instead of the April, 2000 version should apply to this case: the landlord treated the tenant as a co-tenant, rather than a subtenant; the landlord's testimony was based on hearsay and lacks credibility; Costa-Hawkins does not apply to the facts of this case; and the Commissioners did not have the power to overturn the decision upon their consideration of the landlord's appeal.

MSC: To deny the appeal. (Gruber/Lightner: 4-1; Marshall dissenting)

H 1345-47 – 25<sup>th</sup> Ave

AL020086

The landlord's petition for certification of substantial rehabilitation was denied because the Administrative Law Judge found that the landlord had failed to prove that the premises were ineligible for a permit of occupancy. In addition to failing to provide substantiation of the work performed and the costs incurred. On appeal, the landlord argues that the requirements contained in Rules and Regulations Section 8.12 are not mandatory, and the landlord made a good faith effort and substantially complied with the requirements of that Section: the list of "supporting documentation" set forth in Section 8.12 is not an exhaustive or exclusive list, and the policy goals of the Ordinance are satisfied in that units have been added to the housing stock. The landlord alternatively requests that the matter be remanded for a hearing to determine whether a newly created second unit in the building is exempt from the Ordinance.

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

#### VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of February, 2001.

B. The Annual Report on Eviction Notices to the Clerk of the Board of Supervisors.

#### VIII. Director's Report

Executive Director Grubb reminded the Commissioners that their Statement of Economic Interest forms are due by April 1, 2002. He also informed the Board that there are several pieces of legislation potentially affecting the agency pending before the Board of Supervisors: Supervisor Daly has introduced legislation addressing OMI and Ellis eviction "bluff-outs", or threats, which will be heard in Committee on Thursday, March 28<sup>th</sup>. The legislation provides that copies of OMI eviction notices will have to be recorded by the Rent Board and that any threats of eviction issued by landlords, except those regarding non-payment of rent, will have to be filed with the Rent Board. There is also proposed legislation pegging the interest payment on security deposits to the Constant Maturities T-Bill; the Rent Board will do the calculation annually, should the bill pass.

#### IX. Old Business

Rules and Regulations Section 6.15C(3)



In response to an inquiry from a landlord attorney, the Board asked staff to draft language to make clear that a Master Tenant who was paying less than their proportional share of the rent could not be evicted for illegal use of the unit pursuant to Rules Section 6.15C(3). The proposed language was as follows below:

- (3) Partial Sublets. In the event a master tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the master tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the master tenant for the housing and housing services to which the subtenant is entitled under the sub-lease. The exclusive remedy for a violation of this section is an adjustment of the rent and determination of overpayments pursuant to a petition filed with the Board. A master tenant's violation of this section shall not constitute a basis for eviction under Section 37.9

(Proposed new language underlined)

Commissioner Lightner expressed a concern that the language would limit a subtenant's remedies, and preclude their going to court. Commissioners Marshall and Becker suggested putting a period after the word "overpayments", but leaving in the rest of the first sentence. After discussion, the Board voted as follows:

MSC: To put only the second sentence of the proposed amendment to Rules and Regulations Section 6.15C(3) out for Public Hearing.  
(Lightner/Gruber: 3-2; Becker, Marshall dissenting)

The Public Hearing will be held at 6:00 p.m. on April 16, 2002.

X. Calendar Items

March 26, April 2 & April 9, 2002 - NO MEETINGS

April 16, 2002

3 appeal considerations

6:00 Public Hearing:

Proposed Amendments to Rules and Regulations Section 6.15C(3)

XI. Adjournment

President Wasserman adjourned the meeting at 9:09 p.m.



## **ACCESSIBLE MEETING POLICY**

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory), Metered street parking is also available.

### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, 6:00 p.m.,  
April 16, 2002  
25 Van Ness Avenue, #70, Lower Level

**AGENDA**

**DOCUMENTS DEPT.**

APR 12 2002

SAN FRANCISCO  
PUBLIC LIBRARY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

**NOTE:** Pursuant to Section 2.10(e) of the Rules and Regulations,  
members of the public shall be limited to comments of no more  
than 3 minutes' duration.

- V. Public Hearing
- 6:00 Proposed Amendments to Rules and Regulations Section 6.15C(3)
- VI. Consideration of Appeals

A. 2782 Union St. AL020088

The landlord appeals the decision granting rent reductions due to  
decreased housing services.

B. 2242 Polk St. AT020090 thru -94

The tenants in four units appeal the decision certifying capital  
improvement costs.

C. 1204 Alemany Blvd. AL020089

The landlord appeals the decision granting a rent reduction due to a  
decrease in housing services.

D. 1207 & 1209 Guerrero St. AL020097

The landlord appeals the decision granting a Petition for Extension of  
Time but granting rent reductions to one tenant due to the landlord's  
failure to allow reoccupancy of the unit within the time period granted in  
the decision.

E. 1959 Oak St. #4 AL020096





The landlord appeals the remand decision granting the tenant's claim of financial hardship.

F. 961 Pine St., Apt. E

AT020099

One tenant appeals the portion of the decision granting rent increases based on increased operating expenses.

G. 1916 Taraval St.

AT020098

One tenant appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

H. 839 Jones St. #17

AT020095

Two tenants in one unit appeal the decision certifying capital improvement costs on the grounds of financial hardship.

I. 32 Cervantes Blvd.

AL020101

The landlord appeals the decision granting certification of capital improvement costs but discontinuing a prior passthrough.

J. 845 California St. #405

AT020100

One tenant appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

VII. Communications

VIII. Director's Report

IX. Old Business

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

X. New Business

XI. Calendar Items

XII. Adjournment



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SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, April 16, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

I. Call to Order

MAY 6 2002

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:16 p.m. **SAN FRANCISCO  
PUBLIC LIBRARY**

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Marshall; Mosser;  
Murphy; Wasserman.  
Commissioners not Present: Hobson; Lightner.  
Staff Present: Grubb; Wolf.

Commissioner Justman appeared on the record at 6:19 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 19, 2002.  
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Tenant Ross Wilkinson informed the Commissioners that he has filed a Report of Alleged Wrongful Eviction with the Board, and that the landlord has been unresponsive. He asked the Commissioners to investigate his case, and grant him an eviction hearing.

B. Landlord Anthony Schultz of 2782 Union St. (AL020088) explained that, just because he gave the tenant a 60-day notice of restoration of the housing service, he was not conceding that the service had been taken away. Mr. Schultz is disputing the amount of the rent reduction granted by the Administrative Law Judge.

V. Consideration of Appeals

A. 2782 Union St.

AL020088

The tenant's petition alleging substantial decreases in housing services was granted, and the landlord was found liable to the tenant in the amount of \$1,205.00 due to loss of exclusive use of the deck and garden area and loss of laundry privileges. On appeal, the landlord asserts that: the tenant has not actually suffered the loss of exclusive use of the deck and garden, and failed to meet her burden of proving such a loss; no quantifiable evidence was presented to justify the \$100 per month valuation for loss of exclusive use; and the base rent amount in the decision is incorrect because an allowable annual rent increase has since been issued.





MSC: To accept the appeal and remand the case for a hearing on the amount of the rent reduction and the period of time for which the rent reduction was granted. (Murphy/Gruber: 3-2; Becker, Marshall dissenting)

B. 2242 Polk St. #302, 303, 310 & 501

AT020090 thru -94

The tenants in unit numbers 302, 303, 310 and 501 filed their appeals more than five weeks late because they were confused by the landlord's petition, which did not show their rents being increased due to the capital improvement passthrough.

MSC: To find good cause for the late filing of the appeals.  
(Becker/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs to 33 of 49 units was granted, resulting in a monthly passthrough in the amount of \$26.46. The tenants in four units, who failed to appear at the hearing, appeal the decision. The tenants were confused by the landlord's petition, which did not show their rents going up as a result of the passthrough, because the tenants are currently paying the 10% maximum annual cap due to a prior capital improvement passthrough.

MSC: To accept the appeals and remand the case for a hearing in order for the tenants to raise applicable defenses to certification of the capital improvement costs, if any. (Marshall/Becker: 5-0)

C. 1204 Alemany Blvd.

AL020089

The tenant's petition alleging a substantial decrease in housing services was granted and the landlord was found liable to the tenant in the amount of \$861.00 due to the replacement of a no-fee washer and dryer with coin-operated appliances. The landlord appeals, claiming that: the Administrative Law Judge was biased against him; the lease he entered into with the tenant let him know that a "pay Wash and Dri" was going to be installed shortly; the subtenant has vacated the premises, so the rent reduction amount granted to her constitutes a windfall to the master tenant; and the tenant perjured himself at the hearing.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the decision and find that there was no decrease in housing services based on the facts of this case.  
(Murphy/Gruber: 4-1; Becker dissenting)

D. 1207 & 1209 Guerrero St.

AL020097

The landlord's Petition for Extension of Time to do Capital Improvement Work was granted, and the Administrative Law Judge found that it was reasonable for completion of the work to extend through October 31, 2001. The tenants filed petitions alleging decreased housing services due to the landlord's failure to allow them to reoccupy the subject units within the time period granted in the decision. The petition of the tenant in unit #1207 was denied, because the tenant was paying the same amount of rent in the replacement unit as she had been paying in the subject unit. The petition of the tenant in unit #1209 was granted, and the landlord was found liable to the tenant in the amount of \$900 per month. The landlord appeals, claiming that: the tenant in unit #1209 did not support her allegations with



receipts or other documentation; the delays in the work were reasonable and necessary; the premises were ready for reoccupancy by the middle of February, and the rent reduction should have terminated at that time; and the Rent Board does not have the authority to award damages for a period of time when there was no tenancy in existence.

This appeal was withdrawn immediately prior to the meeting.

E. 1959 Oak St. #4

AL020096

The landlord's appeal was filed four days late because the property management company did not receive a copy of the decision, and the owner of the property is frequently away on business.

MSC: To find good cause for the late filing of the appeal.  
(Murphy/Gruber: 5-0)

The landlord's petition seeking certification of capital improvement costs was granted. The tenant's appeal on the grounds of financial hardship was accepted and remanded for hearing. The Administrative Law Judge found sufficient financial hardship to warrant a deferral of the passthrough through February 28, 2003. The landlord appeals the remand decision, claiming that if the tenant obtained a roommate and gave up her parking space, she would no longer fall within the Board's hardship guidelines.

MSC: To deny the appeal. (Becker/Marshall: 4-1; Gruber dissenting)

F. 961 Pine St., Apt. E

AT020099

The landlord's petition for certification of capital improvement costs and rent increases based on increased operating expenses was granted, in part. One tenant appeals the imposition of the operating expense increase to all units in the building equally, since he resides in a smaller unit.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

G. 1916 Taraval St.

AT020098

The landlord's petition for certification of capital improvement costs for two units was granted pursuant to a Minute Order. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Becker: 5-0)

H. 839 Jones St. #17

AT020095

The landlord's petition for certification of capital improvement costs to seven of seventeen units was granted, in part. Two tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Marshall/Becker: 5-0)



I. 32 Cervantes Blvd.

AL020101

The landlord's petition for certification of the costs of exterior painting and staircase repair to one unit was granted. However, a previous passthrough for painting the front of the building was discontinued, because the current paint job also included painting the front of the building. On appeal, the landlord claims that she should have received more, since the current paint job also included painting the side of the building.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

J. 845 California St. #405

AT020100

The tenant's appeal was filed one month late because the tenant waited for the notice of rent increase and was not aware of having to file within 15 days of issuance of the Minute Order.

MSC: To find good cause for the late filing of the appeal.  
(Marshall/Becker: 5-0)

The landlord's petition for certification of capital improvement costs to 43 of 58 units was granted pursuant to a Minute Order. One tenant appeals on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Murphy: 5-0)

VI. Public Hearing

Proposed Amendment to Rules and Regulations Section 6.15C(3)

A Public Hearing to consider an amendment to Rules Section 6.15C(3) was convened and concluded at 6:29 p.m., since no member of the public appeared. The amendment makes it clear that a violation of this Section, which requires that master tenants pay a proportionate share of the rent for the unit, will not serve as a basis for eviction. The language is as follows below (new language underlined):

- (3) Partial Sublets. In the event a master tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the master tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the master tenant for the housing and housing services to which the subtenant is entitled under the sub-lease. A master tenant's violation of this section shall not constitute a basis for eviction under Section 37.9.

MSC: To adopt the proposed amendment to Rules and Regulations Section 6.15C(3). (Becker/Marshall: 5-0)

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a copy of the Appellate Decision in the case of Cobb v. Rent Board (Superior Court Case No. 314966), in which the Court of Appeal upheld the lower



court's denial of the landlord's Writ challenging the denial of a rent increase based on Costa-Hawkins.

VIII. Director's Report

Executive Director Grubb reported as follows:

A. Legislation proposed by Supervisor Daly providing additional eviction protections to tenants passed First Reading at the Board of Supervisors. The legislation will require that oral warnings to tenants must be put in writing within five days, except for non-payment of rent. The warnings will have to be filed with the Rent Board only if the landlord proceeds with an eviction. Settlements involving the waiver of a tenant's rights may go through a mediation/arbitration process, and must be filed with the Board, although the settlement amounts can be redacted. Notices for owner move-in evictions will also have to be filed with the Board, and will expire after three years. Enabling legislation allowing the Rent Board to arbitrate disputes regarding guest and visitor policies in residential hotels also passed first reading.

B. Mr. Grubb reminded the Commissioners that the Open Enrollment period for health benefits is up until May 1<sup>st</sup>.

C. Mr. Grubb provided an update on the department's current petition backlog, which was 315 petitions in January, but has now grown to around 600. This has resulted from the Temporary Moratorium on processing of capital improvement petitions, the extended adjudication of several large cases, and the Board's adoption of Rules Section 1.21, among other factors. A fee increase to \$23 is still going forward as the Department's submission. This will allow the Department to hire two Administrative Law Judges and one recording clerk, and fill the vacant Counselor position. It will not, however, allow for the Department to get rid of the petition backlog within the coming year.

IX. Calendar Items

April 23<sup>rd</sup> & 30th & May 7<sup>th</sup> & 14th - NO MEETINGS

May 21, 2002

8 appeal considerations (2 rescheduled from 5/7/02)

X. Adjournment

President Wasserman adjourned the meeting at 8:19 p.m.





## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

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### **Know Your Rights Under the Sunshine Ordinance**

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April 2, 2002

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

**NOTICE OF PUBLIC HEARING**

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

DATE: APRIL 16, 2002

DOCUMENTS DEPT.

TIME: 6:30 P.M.

APR - 4 2002

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)  
SUITE 70, LOWER LEVEL  
SAN FRANCISCO, CALIFORNIA

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KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE LANGUAGE BELOW AMENDING SECTION 6.15C(3) TO MAKE CLEAR THAT A MASTER TENANT WHO IS PAYING LESS THAN THEIR PROPORTIONAL SHARE OF THE RENT CANNOT BE EVICTED FOR ILLEGAL USE OF THE UNIT PURSUANT TO RULES SECTION 6.15C(3). PLEASE NOTE THAT NEW WORDING IS UNDERLINED AND ANY DELETIONS ARE IN DOUBLE BRACKETS [ [ ] ].

The proposed language is as follows:

04-04-02 A10:11 AM

(3) Partial Sublets. In the event a master tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the master tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the master tenant for the housing and housing services to which the subtenant is entitled under the sub-lease. A master tenant's violation of this section shall not constitute a basis for eviction under Section 37.9.

Comments may be mailed and should be **received** at the Rent Board no later than April 10, 2002, so that they can be mailed and received by the Commissioners prior to the hearing. Comments arriving after this time may not be able to be adequately considered. Comments may also be made in person at the hearing and will be limited to three minutes per person.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
May 21, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

**DOCUMENTS DEPT.**

**MAY 17 2002**

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LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

**NOTE:** Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 3330 Pierce St. #103 AT020102  
(rescheduled from 5/7/02)

The tenant appeals the remand decision denying a deferred maintenance defense to the passthrough of the costs of a new shower.

B. 3590 Sacramento St. #1 AL020103  
(rescheduled from 5/7/02)

The landlord appeals the decision denying a rent increase pursuant to Rules Sections 1.21 and 6.14.

C. 365 Bay St. #3 AT020104

The tenant appeals the dismissal of her petition alleging decreased housing services

D. 685 Geary St. #303, 501, 201, 603 & 206 AT020110 thru -13

The tenants in five units appeal the decision certifying capital improvement costs on the grounds of financial hardship.

E. 725 Van Ness Ave. #404 AT020105

The tenant appeals the determination that he is not a "Tenant in Occupancy" as defined in Rules and Regulations Section 1.21.

F. 1520 Gough St. #705 AT020107





The tenant appeals the allocation of capital improvement costs because he does not live on the side of the building where the work was done.

G. 1371 Jackson St. #302

AT020106

The tenant in one unit appeals the decision certifying capital improvement costs on the grounds of financial hardship

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

- IX. New Business
- X. Calendar Items
- XI. Adjournment





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**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.

MAYOR

SHARON K. WASSERMAN

PRESIDENT

POLLY MARSHALL

VICE-PRESIDENT

Tuesday, May 21, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

JUN 3 2002

I. Call to Order

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Vice-President Marshall called the meeting to order at 6:20 p.m.

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II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Justman;  
Marshall; Mosser.  
Commissioners not Present: Lightner; Wasserman.  
Staff Present: Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:22 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 16, 2002 with a correction to  
show that Commissioner Justman arrived at the meeting timely.  
(Becker/Justman: 4-0)

IV. Remarks from the Public

Robert Pender of the Parkmerced Residents' Organization (PRO) told the Commissioners that twenty tenants wanted to testify at a hearing on the morning of May 10<sup>th</sup>, but they were unable to do so; and that the Administrative Law Judge said that they could not submit written statements. Executive Director Grubb said that he would look into these allegations, respond in writing to Mr. Pender, and report back to the Board.

V. Consideration of Appeals

A. 3330 Pierce St. #103

AT020102  
(rescheduled from 5/7/02)

The landlord's petition for certification of capital improvement costs was granted. A portion of the passthrough to the tenant in unit #103 was for the costs of a new shower, in the amount of \$77.61 per month. The tenant's appeal claiming that the shower replacement was necessitated by deferred maintenance was accepted, and the case was remanded to exclude the parts of the shower remodeling work attributable to deferred maintenance. This reduced the passthrough to \$3.23 per month. The landlord appealed, claiming that he had unable to respond to a post-hearing submission from the tenant, and the case was remanded in order for him to be able to do so. In the second remand decision, the Administrative Law Judge



found the deferred maintenance objection to be inapplicable because the current landlord is a new owner. The tenant appeals this decision on the grounds that: the Administrative Law Judge did not adhere to the Board's motion on remand; the work has been shown to be attributable to deferred maintenance, and it therefore cannot be certified pursuant to Rules Section 7.15(a); the Ordinance provides for successor liability, which is consistent with the California Civil Code; and the landlord failed to respond to the contractor's evidence that the work was attributable to dry rot.

MSC: To vacate the Decision on Remand and remand the case for a hearing to determine the scope of the work that was attributable to deferred maintenance. (Becker/Murphy: 5-0)

B. 3590 Sacramento St. #1

AL020103

(rescheduled from 5/7/02)

The landlords filed a petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" as defined in Rules Section 1.21, and whether a rent increase is warranted pursuant to Rules Section 6.14. The Administrative Law Judge found that the tenant's principal place of residence is in Petaluma, but that there are subtenants on the premises, so no rent increase is warranted pursuant to Section 1.21. Although the subtenants had been served with a 6.14 notice within a reasonable period of time of the landlords' learning of their occupancy, the original tenant has never formally vacated the unit, and the landlords waited 10 years from the original tenant's having moved to Petaluma to impose the increase. Therefore, no rent increase was found to be warranted pursuant to Section 6.14. On appeal, the landlords maintain that: a rent increase pursuant to Section 1.21 is not contingent upon a 6.14 increase being warranted to the subtenants; once there has been a showing that the tenant is not a "Tenant in Occupancy", the Administrative Law Judge is required to grant a rent increase; the decision runs afoul of the spirit and intent of Rules Section 1.21; and the landlords did not know that the original tenant was not residing in the subject unit at all until the day of the hearing.

MSC: To deny the appeal based on the facts of this case and without prejudice to the parties pursuing any other remedies they may have. ((Becker/Marshall: 3-2; Gruber, Murphy dissenting)

C. 365 Bay St. #3

AT020104

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. The tenant's appeal was accepted and the case was remanded for another hearing. The tenant also failed to appear at the remand hearing, and her petition was again dismissed. The tenant was hospitalized on the day of the remand hearing and asks on further appeal that her petition be dismissed without prejudice to her pursuing her claims in another forum.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to change the Dismissal to "Without Prejudice."  
(Becker/Marshall: 4-1; Gruber dissenting)

D. 685 Geary St. #303, 501, 201, 603 & 206

AT020109 thru -13

The landlord's petition for certification of capital improvement costs to 32 of 42 units was granted. The tenants in five units appeal the decision on the grounds of financial hardship.



MSC: To accept the appeal of the tenant in unit #201 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #206 and remand the case for a hearing on the tenants' claim of financial hardship.  
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #303 and remand the case for a hearing on the tenants' claim of financial hardship.  
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #501 and remand the case for a hearing on the tenants' claim of financial hardship.  
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenant in unit #603 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Marshall: 5-0)

E. 725 Van Ness Ave. #404

AT020105

The landlord filed a petition requesting a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21, and whether there are any original occupants residing in the unit as defined under Costa-Hawkins. The Administrative Law Judge found that the tenant does not reside in the subject unit as his principal place of residence and that there are no subtenants residing on the premises. However, a notice of rent increase from \$383 to \$1,050.00 was declared invalid because it was issued prior to the filing of the landlord's petition. The tenant appeals, claiming that: he always has been the original tenant in the unit; he is allowed to have a guest for up to seven days pursuant to his agreement with the landlord; and he spends the majority of his time in the subject unit but he also needs to spend time with his children, who live in Pittsburgh, California.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 1520 Gough St. #705

AT020107

The landlord's petition for certification of capital improvement costs to 30 of 38 units was granted. One tenant appeals on the grounds that the work is of no benefit to him since he resides in the southwest corner of the building, and the work was performed on the east exterior wall of the building.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

G. 1371 Jackson St. #302

AT020106

The landlord's petition for certification of capital improvement costs for 9 of 15 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Murphy: 5-0)







IV. Remarks from the Public (cont.)

Greg Blaine, the landlord in the case at 3330 Pierce St. #103 (AT020102), told the Commissioners that he believes there is a "disconnect" between the Administrative Law Judges and the Senior Administrative Law Judges regarding the Board's "dry rot policy." He also informed the Board that all relevant evidence has already been introduced at the two previous hearings.

VI. Communications

In addition to a communication regarding a case on the calendar, the Commissioners received a Pending Litigation Status Report from Senior Administrative Law Judge Tim Lee.

VII. Director's Report

Executive Director Grubb informed the Board that the Department's Fee Ordinance will be going to the Finance Committee of the Board of Supervisors on May 22<sup>nd</sup>, but it will be continued and heard in conjunction with the departmental budget next month. The amount of the fee has increased from \$23 in February, to \$27 currently. The increase is attributable to the passage of two pieces of legislation sponsored by Supervisor Daly, one which will require the recordation of OMI eviction notices, and the other which will require that the Rent Board adjudicate disputes concerning residential hotel visitor policies. The increased rental unit fee will allow the department to hire three Administrative Law Judges and reduce the petition backlog within two years; in addition to hiring one recording secretary. Mr. Grubb informed the Board that Supervisor Ammiano has introduced legislation representing a compromise between the landlord and tenant communities on the passthrough of capital improvement costs which is currently on 30-day hold, after which time it will be assigned to Committee. Mr. Grubb also told the Commissioners that he would be on vacation next week.

VIII. Calendar Items

May 28, 2002 - NO MEETING

June 4, 2002  
6 appeal considerations

IX. Adjournment

Vice-President Marshall adjourned the meeting at 7:44 p.m.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
June 4, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

DOCUMENTS DEPT.

JUN 4 2002

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BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations,  
members of the public shall be limited to comments of no more  
than 3 minutes' duration.

V. Consideration of Appeals

A. 2117 Larkin St. AL020114

The landlord appeals the decision refunding rent overpayments and  
granting a claim of decreased housing services.

B. 817 Hayes St. AL020116

The landlord appeals the portion of the decision granting a claim of  
unlawful rent increase pertaining to a garage.

C. 376 Ellis St. #405 AL020117

The landlord appeals the decision granting a claim of decreased housing  
services.

D. 161 Jordan Ave. #3 AT020118 & AL020119

The landlord and tenant appeal the decision granting a claim of  
decreased housing services.

E. 544 Clayton St. AT020120

The tenant appeals the dismissal of a petition alleging decreased  
housing services due to her failure to appear at the properly noticed  
hearing.

F. 866 Jackson St., Apt. 206 AT020122



The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

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- IX. New Business
- X. Calendar Items
- XI. Adjournment



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02  
SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, June 4, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSE

BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:09 p.m.

II. Roll Call

Commissioners Present:

Aung; Becker; Hobson; Lightner; Mosser;  
Wasserman.

Commissioners not Present:

Gruber; Marshall; Murphy.

Staff Present:

Grubb; Wolf.

Commissioner Justman appeared on the record at 6:26 p.m.

DOCUMENTS DEPT.

III. Approval of the Minutes

JUN 10 2002

MSC: To approve the Minutes of May 21, 2002.  
(Becker/Mosser: 5-0)

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IV. Remarks from the Public

A. John Kennaugh, representing the tenant at 2117 Larkin (AL020114), said that the summary of the appeal on the Agenda did not reflect the issues raised in the appeal.

B. Joseph Brajkovich, the landlord in the case at 161 Jordan Ave. (AL020119), said that the Commissioners had not looked at the relevant Housing Code Section; that the tenant never showed the landlord that the paint and plaster were peeling; and that the tenant lied and "takes advantage of the Rent Board."

C. Alan Miloslavich, the tenant at 161 Jordan Ave. (AT020118), said that the Department of Building Inspection is objective, and they had issued a citation. Mr. Miloslavich explained that he was asking for more on appeal because he was unable to reside in the unit during the ten day-period that he was painting it.

V. Consideration of Appeals

A. 2117 Larkin St.

AL020114

The tenant's petition alleging unlawful increases in rent and decreased housing services was granted. The landlord was found liable to the tenant in the amount of \$326.40 due to the tenant no longer having exclusive use of the premises, due to the landlord's having moved non-rent paying family members of his own choosing



into the unit. Additionally, the parties were instructed to calculate the amount of rent overpayments owing from the landlord to the tenant, since the actual dates of rent increases and amounts of rent paid by the tenant were not known to the Administrative Law Judge. The landlord appeals, claiming that: the 92-year old landlord was unable to identify the tenant when she tendered the rent check to him early this year; and the petitioner is an unauthorized tenant whose recent rent checks have been returned to her.

MSC: To deny the appeal. (Becker/Aung: 3-2;  
Lightner, Mosser dissenting)

B. 817 Hayes St.

AL020116

The landlord's petition for certification of the cost of a new roof was granted. The petition was consolidated with the tenant's petition alleging unlawful rent increases on a garage space he rents on the premises, for which the landlord was found liable to the tenant in the amount of \$3,114.90. On appeal, the landlord asserts that: the garage rental was a separate agreement entered into after the tenancy commenced and is not subject to the rent increase limitations of the Ordinance because it was not supplied in connection with the rental unit.

MSC: To deny the appeal except to remand the case for a Technical  
Correction to change an incorrect citation in the Decision.  
(Becker/Aung: 5-0)

C. 376 Ellis St. #405

AL020117

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,200.00 due to the lack of clean hallways, a temporary period of no heat and intermittent elevator service. The landlord appeals, asserting that: he cannot be held liable for habitability defects during the period prior to his ownership of the building; two full-time resident managers are retained to clean the hallways, among other duties; and the elevators are repaired as needed, on an ongoing basis.

MSC: To deny the appeal. (Becker/Aung: 3-2; Lightner, Mosser  
dissenting)

D. 161 Jordan Ave. #3

AT020118 & AL020119

The tenant's petition alleging decreased housing services due to the need for interior painting of the unit was granted, and the landlord was found liable to the tenant in the amount of \$625.00. On appeal, the landlord claims that: the Administrative Law Judge was influenced by prior decisions of which she took administrative notice in the decision; according to the applicable Housing Code section, if the walls and ceilings of the bedrooms are free of mildew, dampness and vermin, the landlord is not required to paint the unit; and it is not true that the tenant showed the landlord places where the paint was peeling in the unit. The tenant also appeals, claiming that he could not live in his apartment during the time that he was painting it, and asking to be additionally reimbursed in the amount of \$414.32.

MSC: To deny both the landlord's and tenant's appeals.  
(Lightner/Becker: 5-0)



E. 544 Clayton

AT020120

The tenants filed a petition alleging decreased housing services and requesting that the Rent Board determine whether the current rent is a lawful amount. The petition was dismissed when the tenants failed to appear at the properly noticed hearing. On appeal, the tenants explain that they received a letter from the Rent Board stating that their eviction case had been closed, and thought that this applied to their tenant petition as well.

MSC: To accept the appeal and remand the case for a new hearing.  
(Becker/Aung: 5-0)

F. 866 Jackson St., Apt. 206

AT020122

The landlords' petition to certify capital improvement costs was granted pursuant to a Minute Order. One tenant appeals on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship; attention will be paid to financial assistance that may be available from family members.  
(Becker/Aung 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A copy of a letter from the Executive Director to Robert Pender of the Parkmerced Residents' Organization (PRO).

B. A copy of legislation introduced by Supervisor Gonzales at the Board of Supervisors' meeting on Monday, June 3<sup>rd</sup>. Deputy Director Wolf went over the proposed amendments to the Rent Ordinance with the Commissioners.

#### IV. Remarks from the Public (cont.)

D. Landlord Joseph Brajkovich of 161 Jordan repeated his charge that the Commissioners hadn't looked at the documents he submitted with his appeal. Mr. Brajkovich believes that Housing Code Section 1301 "exonerates" him. Mr. Brajkovich said that the Administrative Law Judges "make mistakes all the time", but that he refuses to lie.

#### VII. Director's Report

Executive Director Grubb informed the Board that Supervisor Peskin's proposed amendment regarding interest on security deposits would be heard in Committee on Thursday, June 6<sup>th</sup>.

#### X. Calendar Items

June 11, 2002 - NO MEETING

June 18, 2002

6 appeal considerations (1 rescheduled from 6/4/02)



XI. Adjournment

President Wasserman adjourned the meeting at 7:26 p.m.







**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
June 18, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

DOCUMENTS DEPT.

JUN 10 2002

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 4045-4047 Cabrillo AL020123

The landlord appeals the decision granting certification of capital improvement costs but determining rent overpayments.

B. 278 Page St. AL020125

The landlord appeals the decision granting a rent reduction due to decreased housing services.

C. 2432 Fulton St. AT020126

The tenant appeals the determination that he is not a "Tenant in Occupancy" pursuant to Rules Section 1.21.

D. 455 Hyde St. #42 AL020121

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21.

E. 1935 Franklin St. #503 AL020115

The landlord appeals the decision denying a rent increase based on comparable rents but granting banked annual rent increases.

F. 1620 Grove St. AT020124



The tenant appeals the decision granting rent increases based on increased operating expenses, asserting that there is an error in the decision regarding her anniversary date.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

- IX. New Business
- X. Calendar Items
- XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.





SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, June 18, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Marshall;  
Moss; Murphy; Wasserman.  
Staff Present: Grubb; Wolf.

Commissioner Lightner appeared on the record at 6:14 p.m.; Commissioner  
Justman appeared at 6:16 p.m.

DOCUMENTS DEPT.

III. Approval of the Minutes

MSC: To approve the Minutes of June 4, 2002.  
(Becker/Wasserman: 5-0)

JUL 8 2002

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IV. Consideration of Appeals

A. 4045-4047 Cabrillo St.

AL020123

The landlord's petition for certification of capital improvement costs to one unit was granted. However, rent overpayments in the amount of \$3,348.68 were determined to be owing from the landlord to the tenants. Additionally, the notice of rent increase was found to have been given to the tenants prior to the petition having been filed, so that any amounts paid by the tenants for the capital improvement passthrough were ordered refunded. The landlord appeals, claiming that the tenants had partially corrected the errors made by the landlord regarding the anniversary date and amount of rent increase; and that the notice of rent increase was dated prior to the petition's having been filed, but not served upon the tenants until afterwards.

MSC: To accept the appeal and remand the case to the Administrative  
Law Judge to determine when the notices of rent increase were  
served; a hearing will be held only if necessary. The appeal is  
denied as to all other issues. (Becker/Murphy: 5-0)

B. 278 Page St.

AL020125

The landlord's appeal was filed one day late because the landlord had surgery from which he is still recovering.





MSC: To find good cause for the late filing of the appeal.  
(Becker/Gruber: 5-0)

The tenant's petition alleging a substantial reduction in housing services due to lack of access to a common dining room and den was granted, and the landlord was found liable to the tenant in the amount of \$2,281.25. On appeal, the landlord claims that the tenant is causing him great mental and physical suffering; the decision exacerbates his financial burdens; and he would be negatively impacted by having to increase the tenant's living space.

MSC: To accept the appeal and remand the case for a hearing on the issue of landlord hardship only. (Becker/Gruber: 5-0)

C. 2432 Fulton St.

AT020126

The tenant filed a petition requesting a determination as to whether the occupant is a "Tenancy in Occupancy" pursuant to Rules and Regulations Section 1.21. The Administrative Law Judge found that the subject unit appears to be used for storage purposes only, and that the landlord is therefore entitled to an unlimited rent increase. The tenant failed to appear at the properly scheduled hearing. On appeal, the tenant claims that the decision is in error due to partial, withheld, and misleading evidence, and that several weeks' delay in processing mail is typical of the tenant's 27 years of employment as a physicist.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

D. 455 Hyde St. #42

AL020121

The landlord filed a petition seeking a determination as to whether any of the tenants are "Tenants in Occupancy" pursuant to Rules Section 1.21, and whether a rent increase is justified pursuant to Rules Section 6.14 and/or Costa-Hawkins. The Administrative Law Judge found that since the original tenant was only temporarily absent from the unit to take care of an ill relative, no rent increase was warranted. On appeal, the landlord claims that the facts do not support the decision in that: the tenant owns property in San Jose, where he lives with his family; the tenant provided no documentary evidence that the subject unit is his principal place of residence; the decision is based entirely on the tenant's testimony; and the tenant has evidenced no intent to return to the subject unit.

MSC: To deny the appeal. (Becker/Marshall: 4-1; Gruber dissenting)

E. 1935 Franklin St. #503

AL020115

The landlord's petition for a rent increase based on comparable rents was granted, and a rent increase from \$930.00 to \$1,650.00 was approved. The landlord was also found liable to the tenants in the amount of \$59.52 due to a one-month overpayment in rent. The Administrative Law Judge found that the prior resident manager of the building had approved the tenants' exchanging units in the building at the same rent, but lacked the authority to do so, which constituted fraud or "some other reason" for the tenants' rent having been set low. The tenants' appeal of the portion of the decision allowing the comparables rent increase was accepted at the October 30, 2001 Board meeting and remanded with the sense of the Board that no comparables rent increase was warranted in this case. The landlord's appeal was



also remanded on the issue of allowable banking only. In the Decision on Remand, the comparables increase is denied, but banking is allowed back to 1995, which was the commencement date of the assigned tenancy. The landlord appeals the remand decision, asserting that: if a tenant asks to be moved into a new unit in the same building, a new tenancy is created in that unit and the length of occupancy in that unit is determinative for purposes of a comparables increase; there have been only negligible rent increases since the unit was last empty, so the initial rent was set very low; a special relationship can be inferred between the tenants and the prior resident manager; new evidence submitted at the comparables hearing was ignored; the case of Vega v. City of West Hollywood requires that there be a mechanism for an owner to receive market rent at the time the unit comes under rent control; the Administrative Law Judge heard all the evidence and her original decision should not have been disturbed; the decision is in error as to the inception date of the assigned tenancy; and there were no unlawful rent increases by the current or prior owner.

MSC: To recuse Commissioners Lightner and Becker from consideration of this appeal. (Becker/Lightner: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law on the issue of the rent history; to grant the rent increase based on comparables approved in the first Decision prospectively only; and to waive any retroactive amounts that would be owed by the tenants due to the comparables rent increase being approved.  
(Murphy/Gruber: 4-1; Marshall dissenting)

F. 1620 Grove St.

AT020124

The landlord's petition for rent increases to two units based on increased operating expenses was granted. The tenant in one unit appeals on the grounds that the decision is mistaken regarding the anniversary date for her annual rent increase.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine the tenant's proper anniversary date; a hearing will be held only if necessary. (Gruber/Murphy: 5-0)

#### V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the office workload statistics for the month of May 2002.

#### VI. Director's Report

Executive Director Grubb informed the Board that Supervisor Peskin's legislation changing the way that interest on security deposits is calculated passed on First Reading at the Board of Supervisors. The legislation has been amended to remove any retroactive provisions. The Rent Board will post the interest rate annually. Mr. Grubb also told the Commissioners that the departmental budget would be heard at the Board of Supervisors on Wednesday, June 19<sup>th</sup>.

#### VII. Calendar Items

June 25, July 2 & July 9, 2002 - NO MEETINGS



July 16, 2002

8 appeal considerations

VIII. Adjournment

President Wasserman adjourned the meeting at 7:50 p.m.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
July 16, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

**DOCUMENTS DEPT.**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.
- V. Consideration of Appeals

JUL 8 2002

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A. 520 South Van Ness #395, 319 & 258 AT020127 thru -29

The tenants in three units appeal the dismissal of their petitions alleging decreased housing services due to their failure to appear at the hearing.

B. 2046 Clement St. AT020130

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

C. 1108 Fulton St. AT020131

The tenant appeals the second remand decision adjusting the amount of the rent reduction granted for decreased housing services.

D. 235 De Montfort Ave. AT020132

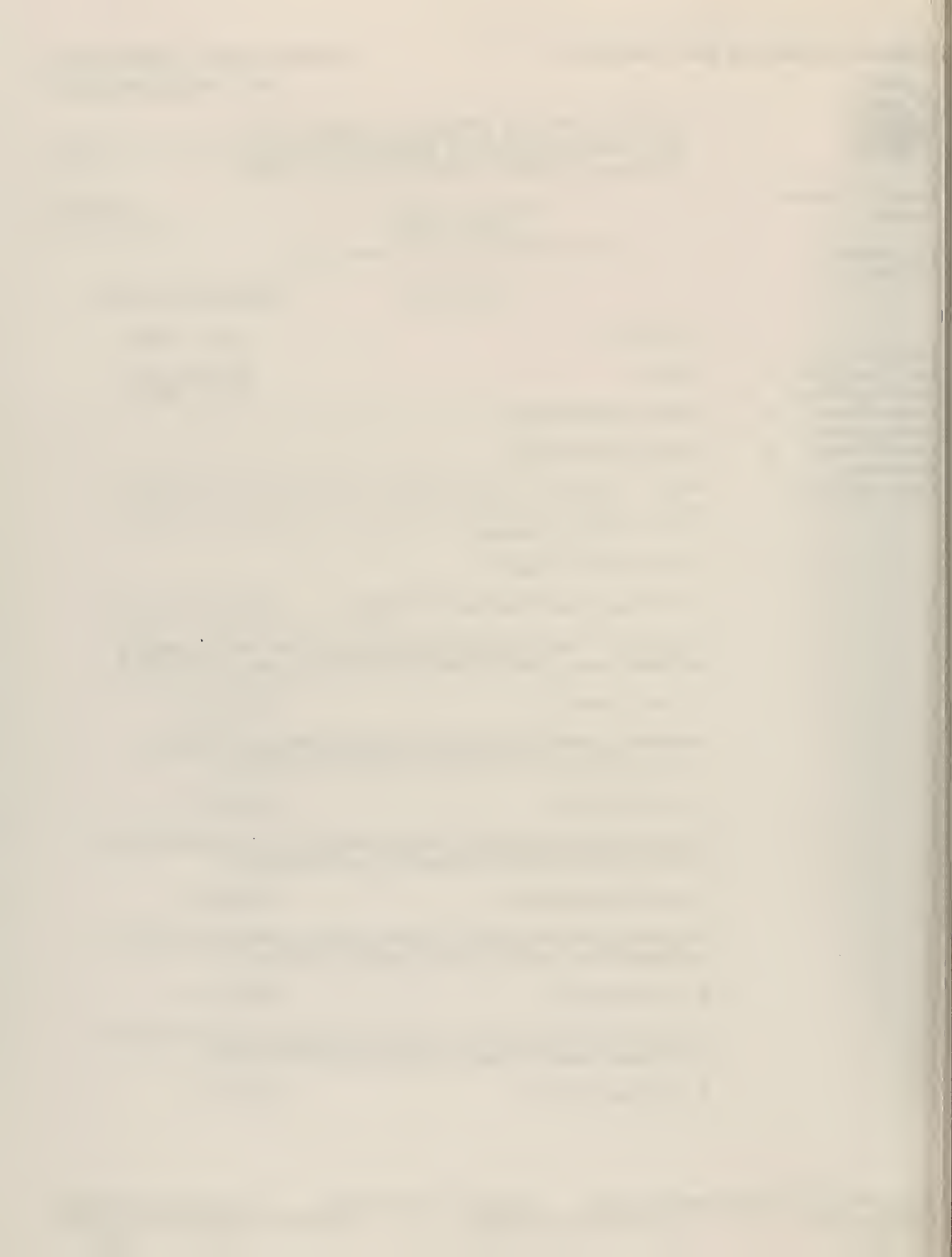
The tenant appeals the decision granting a claim that the Master Tenant had charged more rent than he was paying to the landlord.

E. 1461 Hyde St. AT020133

One tenant untimely appeals the decision granting rent increases based on increased operating expenses, claiming financial hardship.

F. 926 Grove St. #12 AL020134







The landlord appeals the decision granting rent reductions due to decreased housing services.

G. 20 Adele Ct. #455

AT020135

The tenant appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

H. 725 Ellis St. #106

AL020136

The landlord appeals the decision finding that no rent increase is warranted pursuant to Rules Sections 1.21 and/or 6.14.

I. 2340 Filbert St. #11

AT020137

The tenant appeals the decision finding that a rent increase is warranted pursuant to Costa-Hawkins.

J. 1053 Oak St., Apt. 203

AT020138

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

K. 3240 – 17<sup>th</sup> St.

AL020140

The Master Tenant appeals the decision refunding rent overpayments pursuant to Rules Section 6.15C(3), contending non-receipt of the notice of hearing.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

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- IX. New Business
- X. Calendar Items
- XI. Adjournment



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HARON K. WASSERMAN  
PRESIDENT

OLLY MARSHALL  
VICE-PRESIDENT

HIN MAI AUNG  
ARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
REDERICK HOBSON  
NTHONY JUSTMAN  
ERRIE T. LIGHTNER  
EVEO MOSSER  
ARTHOLOMEW MURPHY

# Residential Rent Stabilization and Arbitration Board

## MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, July 16, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

JUL 23 2002

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### I. Call to Order

President Wasserman called the meeting to order at 6:10 p.m.

### II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Justman;  
Marshall; Mosser.  
Commissioners not Present: Lightner; Wasserman.  
Staff Present: Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:19 p.m.

### III. Approval of the Minutes

MSC: To approve the Minutes of June 18, 2002  
(Becker/Gruber: 4-0)

### IV. Consideration of Appeals

A. 725 Ellis St. #106

AL020136

The landlord filed a petition seeking a determination as to whether there is currently a "Tenant in Occupancy" at the subject unit and whether an unlimited rent increase is authorized pursuant to Rules Sections 1.21 and/or 6.14. The Administrative Law Judge found that, while original tenant Kiet Tran no longer lived at the subject unit, David Tran has been a tenant in occupancy at the premises since at least 1996. Therefore, no rent increase was found to be warranted pursuant to Section 1.21. Additionally, since David Tran has been residing at the premises as a tenant rather than a subtenant, no rent increase was warranted under Costa-Hawkins. Lastly, a 6.14 notice was found not to have been timely served. On appeal, the landlord argues that the facts of the instant case are distinguishable from those in the case of Cobb v. S.F. Rent Board because a novation was created between the landlord and tenant in Cobb, whereas no contract existed between the landlord and the tenant in this case.

MSC: To deny the appeal. (Becker/Marshall: 4-0)

B. 2340 Filbert #11

AT020137

The landlord filed a petition requesting a determination as to whether the tenant is subject to an unlimited rent increase pursuant to Costa-Hawkins and/or Rules and



Regulations Section 6.14, although no 6.14 notice was ever issued by the landlord. The Administrative Law Judge found that the original tenant no longer permanently resides at the premises and the subtenant was not in possession prior to January 1, 1996, and that a rent increase is therefore warranted under Costa-Hawkins. The tenant appeals, arguing that: the Administrative Law Judge wrongly interpreted the literal language of Costa-Hawkins; nothing in Costa-Hawkins requires that residency be full-time in order to prevent a rent increase; the landlord waived the right to a rent increase by accepting rent from the master tenant after having been notified in writing of the presence of a subtenant; the master tenant is still in lawful possession of the unit, which forecloses a Costa-Hawkins increase; if the legislature had intended to make "principal place of residence" the standard for a Costa-Hawkins increase, they would have done so; the rent increase is in violation of an agreement between the landlord and tenant that the tenant may sublet without reprisal by the landlord; and Costa-Hawkins allows a rent increase to a subtenant or assignee, and not to a master tenant.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Becker, Marshall dissenting)

C. 520 So. Van Ness #319, 395 & 258

AT020127 thru -29

Three tenants' petitions alleging decreased housing services were dismissed due to their failure to appear at the properly noticed hearing. On appeal, the tenant in unit number 319 explains that the notice was sent to the wrong name, and returned as "undeliverable" by the Post Office. The tenant in unit number 395 claims not to have received the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing. The tenant in unit number 258 says that he is a health care worker in charge of terminally ill clients, and that he cannot just take time off from work.

MSC: To accept the appeals of the tenants in unit #319, 395 and 258 and remand the cases for a new hearing. The tenant in unit #258 is admonished that any further hearings will not be granted should he fail to attend the remand hearing, absent extraordinary circumstances. (Becker/Murphy: 5-0)

D. 2046 Clement St.

AT020130

The tenant's appeal was filed over two months late because the tenant swears that he did not receive a copy of the Dismissal.

MSC: To find good cause for the late filing of the appeal.  
(Gruber/Becker: 5-0)

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.  
(Becker/Gruber: 5-0)

E. 1108 Fulton St.

AT020131





The tenants' petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenants in the amount of \$2,979.00 due to the loss of housing services during a period of construction on the property. The landlords and tenants appealed the decision. The tenants' appeal was granted only to correct certain factual errors in the decision; the landlords' appeal was accepted only to adjust the termination dates of rent reductions granted for openings under the kitchen island and replacement of the front bathroom window, if warranted. In the decision on remand, the Administrative Law Judge determined that no rent reduction was warranted for the window, since the landlord had immediately responded to the problem; and adjusted the amounts owed due to the kitchen island openings having been corrected. The tenants appealed the remand decision, and the Board accepted the appeal and remanded the case to determine whether the gap in the kitchen island had ever been repaired. In the second remand decision, the Administrative Law Judge adjusted the amount of the rent reductions granted for the kitchen island gap and front bathroom holes. The tenant again appeals, claiming that the dishwasher panel is not properly fixed; and that there is an error in the decision regarding a date.

MSC: To remand the case to the Administrative Law Judge for a  
Technical Correction only; to deny the appeal as to all other issues.  
(Gruber/Murphy: 4-1; Marshall dissenting)

F. 235 De Montfort Ave.

AT020132

The tenant's petition alleging that the Master Tenant charged him rent in excess of the amount paid by the Master Tenant to the landlord was granted, and the Master Tenant was found liable to the tenant in the amount of \$2,077.18. On appeal, the tenant asks that a security deposit in the amount of \$400 be added to the amount ordered owed to him by the Administrative Law Judge.

MSC: To deny the appeal because the Rent Board has no jurisdiction  
over security deposits; the tenant is advised that he may pursue  
this claim in Small Claims Court. (Murphy/Gruber: 5-0)

G. 1461 Hyde St.

AT020133

The tenant's appeal was filed sixteen days late because the tenant's roommate had vacated the unit and the Post Office returned jointly addressed mail as undeliverable.

MSC: To recuse Commissioner Aung from consideration of this appeal.  
(Becker/Murphy: 5-0)

MSC: To find good cause for the late filing of the appeal.  
(Gruber/Murphy: 5-0)

The landlord's petition for rent increases to four of ten units based on increased operating expenses was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the  
tenant's claim of financial hardship. (Becker/Marshall: 5-0)

H. 926 Grove St.

AL020134



The tenant's petition alleging decreased housing services due to a hole in the bathroom floor and inability to use the shower was granted and the landlord was found liable to the tenant in the amount of \$360.00. On appeal, the landlord claims that: the defective condition existed at the time the tenant moved in; repairs were promptly effectuated; the shower could be used at all times; and no rent reduction is warranted since the unit was improved by the repairs.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

I. 20 Adele Ct. #455

AT020135

The landlords' petition for certification of capital improvement costs was granted pursuant to a Minute Order. One tenant untimely appeals the decision on the grounds of financial hardship.

This case was continued by consensus in order for staff to contact the tenant and have any other adult occupants of the unit fill out Hardship Applications.

J. 1053 Oak St., Apt. 203

AT020138

The tenant's appeal was filed almost six weeks late because the tenant thought that her successful hardship appeal of an operating and maintenance expense increase would also apply to the capital improvement passthrough case that was held in abeyance due to the Moratorium.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Murphy: 5-0)

The landlord's petition for certification of capital improvement costs to thirteen units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and find sufficient financial hardship to warrant deferral of the capital improvement passthrough until August 1, 2004. If the landlord has reason to believe that the tenant's financial circumstances have changed such that she is no longer experiencing financial hardship prior to that time, he may re-open this appeal. If the tenant requires additional deferral of the capital improvement passthrough upon the expiration of the two-year period, she may file to re-open this appeal no later than June 30, 2004. Any sums that the tenant may have paid towards the capital improvement passthrough may be deducted from her next rental payment due. (Becker/Gruber: 5-0)

K. 3240 – 17<sup>th</sup> St.

AL020140

The subtenant filed a petition requesting a determination as to the lawfulness of his base rent pursuant to Rules and Regulations Section 6.15C(3). The Administrative Law Judge found that the subtenant was paying 36% of the total rent, but occupying only 16.7% of the exclusively occupied space. Therefore, the Master Tenant was found liable to the subtenant in the amount of \$1,494.45. The Master Tenant, who failed to appear at the hearing, appeals the decision, alleging that she failed to receive the notice of hearing.



MSC: To accept the appeal and remand the case for a new hearing.  
(Becker/Murphy: 5-0)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a letter from a landlord in Puerto Vallarta, Mexico. Executive Director Grubb will respond on behalf of the Board.

VI. Director's Report

The Executive Director informed the Commissioners that the rental unit fee that funds the agency passed Second Reading at the Board of Supervisors. The new fee will be \$27.00, \$5.50 of which will be borne by landlords. The fee for residential hotel rooms will be \$13.50; landlords will pay \$2.75 of this amount. The increased fee will sunset in two years and revert to the prior amount of \$16.00.

Mr. Grubb also gave the Board a report on pending legislation at the Board of Supervisors. Supervisor Peskin's legislation changing the way that security deposit interest is calculated takes effect on August 4<sup>th</sup>. The new interest amount will be 3.4%, to be recalculated every March 1<sup>st</sup>. Amendments to the Ordinance introduced by Supervisor Gonzales are on 30-day hold. Supervisor Ammiano's amendments introducing a 50-50 split of capital improvement costs in buildings of six units or more will be brought to Committee in the next few weeks. An affordable housing bond was put on the ballot, with the resulting property tax increase to be split between landlords and tenants. Lastly, a bond to finance repairs and upgrades to the Hetch-Hetchy water system will be introduced at the Finance Committee tomorrow, July 17<sup>th</sup>.

VII. Calendar Items

July 23 & 30, 2002 - NO MEETINGS

August 6, 2002

8 appeal considerations (1 cont. from 7/16/02)

VIII. Adjournment

Vice-President Marshall adjourned the meeting at 7:35 p.m.





*amalel 7*  
 HARRON K. WASSERMAN  
 PRESIDENT  
 02  
 COLLY MARSHALL  
 VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
 THE SAN FRANCISCO RESIDENTIAL RENT  
 STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
 MAYOR

JOSEPH GRUBB  
 EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
 August 6, 2002  
 25 Van Ness Avenue, #70, Lower Level

**AGENDA**

SHIN MAI AUNG  
 HARRY BEACH BECKER  
 DAVID GUSTAV GRUBER  
 FREDERICK HOBSON  
 ANTHONY JUSTMAN  
 MERRIE T. LIGHTNER  
 DEVEO MOSSER  
 ARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

DOCUMENTS DEPT.

JUL 23 2002

SAN FRANCISCO  
 PUBLIC LIBRARY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 20 Adele Ct. AT020135  
 (cont. from 7/16/02)

The tenant untimely appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

B. 623 - 15<sup>th</sup> Ave. AT020141

The tenant appeals the decision denying a claim of decreased housing services due to the landlord's failure to allow a second replacement roommate within a 12-month period.

C. 808 Leavenworth St. AL020144

The landlord appeals the dismissal of a petition for certification of capital improvement costs due to his failure to appear at the properly noticed hearing.

D. 1204 Alemany Blvd. AST020143

The tenant appeals the remand decision denying his claim of decreased housing services.

E. 370 Ellis St. #28 AT020145

The tenant appeals the decision denying claims of decreased housing services.







F. 2741 Clay St.

AT020146

The tenant appeals the decision that he is not a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

G. 424 Bartlett St. #1

AT020191

The tenant appeals the dismissal of her petition alleging decreased housing services and an unlawful rent increase based on her failure to appear at the hearing.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business
- X. Calendar Items
- XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Residential Rent Stabilization  
and Arbitration Board

NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
August 6, 2002  
25 Van Ness Avenue, #70, Lower Level

Amended AGENDA

DOCUMENTS DEPT.

JUL 29 2002

SAN FRANCISCO  
PUBLIC LIBRARY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

- A. 20 Adele Ct. AT020135  
(cont. from 7/16/02)

The tenant untimely appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

- B. 623 - 15<sup>th</sup> Ave. AT020141

The tenant appeals the decision denying a claim of decreased housing services due to the landlord's failure to allow a second replacement roommate within a 12-month period.

- C. 808 Leavenworth St. AL020144

The landlord appeals the dismissal of a petition for certification of capital improvement costs due to his failure to appear at the properly noticed hearing.

- D. 1204 Alemany Blvd. AST020143

The tenant appeals the remand decision denying his claim of decreased housing services.

- E. 370 Ellis St. #28 AT020145

The tenant appeals the decision denying claims of decreased housing services.





F. 424 Bartlett St. #1

AT020191

The tenant appeals the dismissal of her petition alleging decreased housing services and an unlawful rent increase based on her failure to appear at the hearing.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business

Brown v. Rent Board (2340 Filbert St. #11; considered 7/16/02)

- X. Calendar Items
- XI. Adjournment







HARON K. WASSERMAN  
PRESIDENT  
OLLY MARSHALL  
VICE-PRESIDENT

Residential Rent Stabilization  
and Arbitration Board

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, August 6, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

AUG 19 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

Vice-President Marshall called the meeting to order at 6:11 p.m.

II. Roll Call

Commissioners Present: Becker; Hobson; Justman; Marshall; Mosser; Murphy.  
Commissioners not Present: Gruber; Lightner; Wasserman.  
Staff Present: Grubb; Wolf.

Commissioner Aung appeared on the record at 6:13 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 16, 2002.  
(Becker/Murphy: 5-0)

IV. Remarks from the Public

A. Robert Pender of the Parkmerced Residents' Organization (PRO) distributed a copy of the organization's latest newsletter; told the Board that the organization has been "vigorously" representing tenants at Rent Board hearings; and introduced members of PRO that were in attendance at the meeting.

B. Tenant Ross Wilkinson submitted a letter raising the following points: the IRS does not consider interior or exterior painting a capital improvement, and neither should the Rent Board; the Rent Board should pursue credible accusations of perjury; wrongful eviction hearings should be recorded; and the Board's recycled tapes are sometimes inaudible.

C. Kevin Donahue, who has been a resident at Parkmerced for twenty-five years, said that he believes painting and new roofs constitute routine maintenance.

D. Sharon Gelder, a tenant at Parkmerced, said that capital improvements and rent increases would price people out of their units. Ms. Gelder believes that the work is unnecessary, and is being done to appeal to new renters, at long-time tenants' expense.

E. Ana Maria Huslen has lived at Parkmerced for twenty-five years and is concerned about rent increases, since she is still paying for windows that were put in ten years ago.



V. Consideration of Appeals

A. 20 Adele Ct. #455

AT020135  
(cont. from 7/16/02)

The landlords' petition for certification of capital improvement costs was granted pursuant to a Minute Order. One tenant filed an untimely appeal of the decision on the grounds of financial hardship. The appeal was continued from the meeting on July 16<sup>th</sup> in order for other occupants of the unit, the tenant's wife and adult daughter, to fill out Hardship Applications. Since nothing was received from the tenants, who are not native English speakers, this case was continued to the August 20<sup>th</sup> meeting in order for staff to contact the tenant appellants one more time.

B. 623 – 15<sup>th</sup> Ave.

AT020141

The tenant's petition alleging decreased housing services due to the landlord's refusal to allow a replacement roommate was denied. The Administrative Law Judge found that the landlord's refusal was not unreasonable because it was the second request within a one-year period absent good cause. The tenant appeals, asserting that: the request to sublet was made with good cause; her roommate had agreed to limited use of the kitchen, and that was not the reason she vacated the unit; the roommate moved out because she felt unsafe walking home from the bus stop late at night after work; and she had no control over her roommate moving out.

MSC: To recuse Commissioner Aung from consideration of this appeal.  
(Becker/Marshall: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to vacate the decision and find good cause under the facts of this case. (Becker/Marshall: 5-0)

C. 808 Leavenworth St.

AL020144

The landlord's petition for certification of capital improvement costs to 20 of 33 units was dismissed due to the landlord's failure to appear at the properly noticed hearing. On appeal, the landlord claims to have been out of the country at the time of the hearing.

After discussion, it was the consensus of the Board to continue this case to the meeting on August 20<sup>th</sup> in order for the landlord to provide documentation of his having been out of the country and an explanation as to why he failed to request a postponement.

D. 1204 Alemany Blvd.

AT020143

The tenant's petition alleging a substantial decrease in housing services was granted and the landlord was found liable to the tenant in the amount of \$861.00 due to the replacement of a no-fee washer and dryer with coin-operated appliances. The landlord appealed, claiming that: the Administrative Law Judge was biased against him; the lease he entered into with the tenant let him know that a pay washer and dryer would be installed shortly; the subtenant vacated the premises, so the rent reduction amount granted to her constituted a windfall to the master tenant; and the tenant perjured himself at the hearing. The Board accepted the landlord's appeal



and remanded the case to the Administrative Law Judge to vacate the decision and find that there was no decrease in housing services based on the facts of this case. The tenant appeals the remand decision, arguing that: he never saw a copy of the original lease agreement when he entered into the tenancy; he was never told that the washer and dryer were going to be replaced in the future; and use of a free washer and dryer were part of the original agreement when he rented the apartment.

MSC: To deny the appeal. (Murphy/Mosser: 3-2; Becker, Marshall dissenting)

E. 370 Ellis St. #28

AT020145

The tenant's petition alleging decreased housing services was denied because the Administrative Law Judge found that the conditions were not substantial and/or the tenant had failed to provide the landlord with notice as to the defective conditions. The tenant appeals, claiming that: the Administrative Law Judge imposed too high a standard of proof on the tenant; the Administrative Law Judge required too great a degree of specificity as to the habitability defects; the Administrative Law Judge erred in finding that notice was not provided to the landlord regarding the defective carpet; the landlord was not required to prove why it took three months for the elevator to be repaired, which was the result of years of deferred maintenance; the landlord should have followed up the notice from PG&E regarding the radiator with an inspection; and, had the landlord performed an inspection of the premises, he would have had constructive notice of the problem with the window locks.

MSC: To accept the appeal and remand the case for a hearing on the issues of the elevator and windows; the appeal is denied as to all other issues. (Murphy/Mosser: 5-0)

H. 424 Bartlett St. #1

AT020191

The tenant's petition alleging decreased housing services and an unlawful rent increase was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant admits to having mis-calendared the hearing date, and requests a new hearing.

MSC: To accept the appeal and remand the case for a new hearing; the tenant is advised that should she fail to attend the remand hearing, absent extraordinary circumstances, no further hearings will be granted. (Becker/Mosser: 5-0)

## VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of June, 2002.

B. An updated "Pending Litigation Status Report" from Senior Administrative Law Judge Tim Lee.

C. An updated list of Ordinance amendments.



VII. Director's Report

Executive Director Grubb informed the Commissioners that prior Administrative Law Judges Lily Lau and Vanessa Davenport have been re-hired to fill two of the outstanding Temporary Administrative Law Judge positions that are available. Ms. Lau began working on August 5<sup>th</sup>; Ms. Davenport will be coming on board around October 1<sup>st</sup>. It is unclear at this time whether there will be a need to fill the third Temporary ALJ position; Mr. Grubb expects to know whether this is necessary by October.

IV. Remarks from the Public (cont.)

F. Robert Pender of PRO inquired as to the date of the prior Parkmerced capital improvement passthrough for the installation of new windows. Staff will respond.

VIII. New Business

A. Proposed Amendments to Rules and Regulations Section 1.18

Commissioner Aung presented a proposed revision of the definition of substantial rehabilitation codified in Rules and Regulations Section 1.18. In a recent court decision, the judge found that Section 1.18 as written does not apply to evictions for substantial rehabilitation of the premises because its valuation scheme uses a post-construction frame of reference, whereas evictions occur prior to the work being done. The proposed revision would provide guidance as to the scope of work necessary to justify an eviction based on sub. rehab., using figures that are available prior to the work being completed. This issue will be discussed at the August 20<sup>th</sup> meeting.

B. Brown v. Rent Board (2340 Filbert St. #11; considered 7/16/02)

The landlord's petition seeking a determination as to whether a rent increase was justified under Costa-Hawkins was granted because the Administrative Law Judge found that the tenant no longer permanently resides at the premises and the subtenant was not in possession prior to January 1, 1996. The tenant's appeal of the decision was denied by the Board at their meeting on July 16, 2002. Subsequent to that meeting, a Writ was filed by the tenant's attorney. The Deputy Director asked the Board whether they wished to instruct the Office of the City Attorney to defend the Writ, since both parties are represented by competent counsel, and the policy question is one of interpretation of State law. After discussion, the Board voted as follows:

MSC: To direct the City Attorney to defend the Board's decision in the case of Brown v. Rent Board (Superior Court Case No. 501394).  
(Murphy/Mosser: 3-2; Becker, Marshall dissenting)

IX. Calendar Items

August 13, 2002 - NO MEETING

August 20, 2002

7 appeal considerations (1 post. from 8/6/02; 2 cont. from 8/6/02)  
Old Business: Proposed Amendments to Rules Section 1.18







X. Adjournment

Vice-President Marshall adjourned the meeting at 7:40 p.m.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
August 20, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

**DOCUMENTS DEPT.**

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

AUG 19 2002

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08-19-02A10-39 RCVD

**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations,  
members of the public shall be limited to comments of no more  
than 3 minutes' duration.

**V. Consideration of Appeals**

**A. 20 Adele Ct.**

AT020135  
(cont. from 8/6/02)

The tenant appeals the decision certifying capital improvement costs on  
the grounds of financial hardship.

**B. 808 Leavenworth St.**

AL020144  
(cont. from 8/6/02)

The landlord appeals the dismissal of his petition seeking certification of  
capital improvement costs.

**C. 1550 Bay St.**

AT020147 thru -0190  
(post. from 8/6/02)

Forty-four tenants appeal the remand decision adjusting the amounts  
certified for capital improvement costs and establishing a repayment  
plan.

**D. 42 Rudden Ave.**

AL020192

The landlord appeals the decision granting a claim of decreased housing  
services.

**E. 164 - 5<sup>th</sup> Ave.**

AL020193 & AT020194





The landlord and tenant appeal the decision partially certifying capital improvement costs and granting a rent reduction due to the landlord's failure to consent to a replacement roommate.

F. 721 Geary, Apt. #7

AT020195

The tenant appeals the dismissal of her petition alleging an unlawful rent increase due to her failure to appear at the hearing.

G. 2782 Union St.

AL020197

The landlord appeals the remand decision granting a claim of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

XI. Adjournment



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102  
SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, August 20, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

AUG 30 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Mosser; Murphy;  
Wasserman.  
Commissioners not Present: Hobson; Lightner; Marshall.  
Staff Present: Grubb; Wolf.

Commissioner Justman appeared on the record at 6:25 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 6, 2002.  
(Murphy/Mosser: 5-0)

IV. Remarks from the Public

A. Arnold Cohn, tenant at Marina Cove Apartments, asked about the status of the decision on tenant decrease in service petitions that were filed on June 10, 1998.

V. Consideration of Appeals

A. 20 Adele Ct. #455

AT020135  
(cont. from 8/6/02)

The landlords' petition for certification of capital improvement costs was granted pursuant to a Minute Order. One tenant appealed the decision on the grounds of financial hardship. The appeal was continued from the meetings on July 16<sup>th</sup> and August 6<sup>th</sup> in order for other occupants of the unit, the tenant's wife and adult daughter, to fill out Hardship Applications. The requested additional documents were never furnished by the tenant, despite repeated requests in the tenant's native language by Rent Board staff members.

MSC: To deny the appeal. (Gruber/Murphy: 4-1; Aung dissenting)

B. 808 Leavenworth St.

AL020144  
(cont. from 8/6/02)





The landlord's petition for certification of capital improvement costs to 20 of 33 units was dismissed due to the landlord's failure to appear at the properly noticed hearing. On appeal, the landlord claims to have been out of the country at the time of the hearing. Consideration of the appeal was continued from the meeting on August 6<sup>th</sup> in order for the landlord to provide proof that he was out of the country, and an explanation as to why he failed to request a postponement.

MSC: To accept the appeal and remand the case for a new hearing;  
should the landlord fail to appear, absent extraordinary  
circumstances, no further hearings will be scheduled.  
(Murphy/Gruber: 5-0)

C. 1550 Bay St.

AT020147 thru -0190  
(post. from 8/6/02)

The landlord's petition for certification of capital improvement costs, including a large waterproofing project, to 94 out of 241 units was granted in the amount of almost \$3,200,000.00. 48 tenants, represented by the same attorney, filed a joint appeal. At the meeting on February 22, 2002, the joint appeal was accepted and remanded to the Administrative Law Judge on the issue of allocation of the costs of installing waterproofing materials between the ceiling of the commercial units and the floor of the twelve tenant decks above the ceiling of the commercial units; to determine the use of the old laundry room space as of the date of the close of the record, or March 30, 2001, for purposes of allocation of those costs; and to establish a repayment schedule for sums owing from the tenants to the landlord. 44 tenants represented by the same attorney now appeal the remand decision, claiming that: the tenants were prejudiced because the landlord violated the pre-hearing order regarding evidence; the tenant representatives understood the stipulation reached between the parties regarding the costs of the waterproofing materials as applying only to the appealing tenants; and the entire passthrough should be barred by Proposition H.

Prior to the meeting, the Commissioners received a letter from tenant James O'Donnell of 1550 Bay, whose individual appeal was denied by the Board at their meeting on February 26, 2002. Mr. O'Donnell alleged that Commissioner Bart Murphy had a conflict of interest which he had failed to disclose prior to voting on Mr. O'Donnell's appeal on February 26<sup>th</sup>, because he had represented the landlord in the past. Commissioner Murphy informed the Board that he did not believe that he had a conflict, because he has no financial interest in this case; his name was mistakenly on some pleadings from a 1998 case in which he was not involved; he had never represented the landlord before the Rent Board; and he had no feelings of bias or "lingering loyalty" towards the landlord. Additionally, he had voted with the 5-0 majority to remand the case for further hearing on many of the issues appealed by the tenants. Commission Murphy further informed the Board that he had discussed this matter with the City Attorney, was told that he did not have a conflict, and will be receiving a letter to this effect. It was the consensus of the Commissioners to continue consideration of this case until receipt of the letter from the Office of the City Attorney, either at the meeting on September 3<sup>rd</sup> or 17<sup>th</sup>.

It was later decided that this case would be continued to the Board meeting on September 17<sup>th</sup>.

D. 42 Rudden Ave.

AL020192



The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$4,696.00 due to serious habitability problems in the illegal unit, including the lack of a heating source. The landlord appeals, claiming that: the tenant bought a space heater for the unit and the landlord paid the electrical bills; the tenant did not provide oral or written notice regarding the lack of heat from March of 1997 through May of 2001; and the tenant failed to provide access to the unit in order for the landlord's contractor to effectuate repairs.

MSC: To recuse Commissioner Becker from consideration of this appeal.  
(Aung/Gruber: 5-0)

MSC: To deny the appeal. (Aung/Justman: 4-0)

E. 164 – 5<sup>th</sup> Ave.

AL020193 & AT020194

The landlord filed two petitions for certification of capital improvement costs, which were consolidated for hearing with the tenant's petition alleging decreased housing services due to the landlord's failure to consent to a replacement roommate. One of the capital improvement petitions was granted, in part. The petition requesting certification of the cost of a new roof was denied because the Administrative Law Judge found that the landlord had failed to prove that payment was made. The tenant's petition was granted and the landlord was found liable to the tenant in the amount of \$4,722.20. Both the landlord and tenant appeal the decision regarding the tenant's claim of decreased housing services. The landlord asserts that: the tenant failed to comply with the requirements of Rules Section 6.15B by not requesting permission to have new roommates prior to the commencement of the tenancies; the evidence supporting a finding of constructive eviction of a prior roommate consists of hearsay which should not have been given any weight by the Administrative Law Judge; and the tenant acted in violation of Rules Section 6.15C(3) by charging her roommates more than their proportional share of the rent. The tenant maintains that the rent reduction granted should have been one-half of the tenant's total rent, and not base rent; and that the rent reduction should have extended to the time the tenant obtained a replacement roommate who was agreed to by the landlord.

MSC: To deny the landlord's appeal. (Becker/Aung: 5-0)

MSC: To accept the tenant's appeal and remand the case to the Administrative Law Judge on the record: to base the rent reduction for the landlord's refusal to consent to a replacement roommate on the total rent paid by the tenant on June 14, 2001 and December 1, 2001, including the capital improvement passthroughs in effect on each of those dates; to grant the rent reduction for a reasonable period of time after the landlord's consent to the replacement roommate, not to exceed thirty days; and to order that any amounts unpaid by the tenant shall be offset against amounts owing from the landlord to the tenant.  
(Becker/Aung: 5-0)

F. 721 Geary, #7

AT020195



The tenant's petition alleging an unlawful rent increase was dismissed due to her having arrived 45 minutes late for the properly noticed hearing. On appeal, the tenant claims to have been on a broken-down bus.

MSC: To accept the appeal and remand the case for a new hearing. The tenant is advised that should she fail to appear timely for the next hearing, absent extraordinary circumstances, no further hearings will be granted. (Becker/Aung: 5-0)

G. 2782 Union St.

AL020197

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,205.00 for loss of exclusive use of the deck and garden area and loss of laundry privileges. The landlord appealed on the grounds that there was only a minimal decrease, if any, since no other person had used the deck or garden area during the disputed time period. The landlord's appeal was accepted and remanded for a hearing on the amount of the rent reduction for the deck and the period of time for which the rent reduction was granted. In the Decision on Remand, the Administrative Law Judge reduced the amount of the rent reduction from \$100 per month to \$50 per month and extended the length of time for the rent reduction by an additional month. The landlord appeals the remand decision, arguing that: the tenant provided no evidence that she did in fact suffer a loss of the exclusive use of the backyard area during the period in question; the Administrative Law Judge exhibited bias against the landlord and in favor of the tenant; the letter the landlord sent the tenant regarding the use of the deck was not a notice of change in the terms of the tenancy but, rather, an attempt to clarify the tenant's unsubstantiated claim of a right to exclusive use of the back yard; and the valuation of \$50 per month is arbitrary and not supported by any quantifiable data.

MSC: To deny the appeal. (Murphy/Becker: 4-1; Gruber dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A letter from tenant James O'Donnell of 1550 Bay Street alleging that Commissioner Bart Murphy had a conflict of interest and should not have voted on Mr. O'Donnell's appeal, with supporting documentation.

B. A new staff roster.

#### VII. Old Business

##### Proposed Amendments to Rules and Regulations Section 1.18

The Board continued their discussion of a proposal by Commissioner Aung to revise the definition of substantial rehabilitation codified in Rules and Regulations Section 1.18. In a recent court decision, the judge found that Section 1.18 as written does not apply to evictions for substantial rehabilitation of the premises because its valuation scheme uses a post-construction frame of reference, whereas evictions occur prior to the work being done. The proposed revision would provide guidance as to the scope of work necessary to justify an eviction based on sub. rehab., using





figures that are available prior to the work being completed. Commissioner Aung provided the Commissioners with copies of the briefs in Barjesteh v. Qaqish (Superior Court Case Nos. 192 549 & 192 550) and a Memo from Attorney Gen Fujioka of the Asian Law Caucus explaining why Rules Section 1.18 needs to be clarified. Several Commissioners agreed that additional guidance as to what constitutes substantial rehabilitation could aid both landlords and tenants and their attorneys. This issue will be discussed further at the September 3rd meeting.

IV. Remarks from the Public (cont.)

B. The landlord in the case at 42 Rudden (AL020192) told the Board that the tenant is moving out on September 1<sup>st</sup>. He paid the tenant \$3,000 to move out, and wishes to spread out the payments.

C. Tenant Sharon Gelder of Parkmerced told the Board that, in addition to the operating and maintenance expense increases that have been approved for 2,400 units, there are currently capital improvement passthrough petitions in the pipeline. Ms. Gelder objected to what she believed was the Rent Board's delegation of their authority to hear hardship appeals to Parkmerced. It was explained that Parkmerced has offered to settle hardship claims privately with tenants who approach them, and tenants will be given until October 1<sup>st</sup> to do so, but that this in no way compromises the tenant's right to pursue such a claim with the Rent Board should they fail to work out an agreement with Parkmerced. Additionally, any tenant who wishes to pursue their hardship appeal through the Rent Board will not be required to approach Parkmerced first.

VIII. Calendar Items

August 27, 2002 - NO MEETING

September 3, 2002

6:00 Executive Session: Blaine v. Rent Board (Sup. Ct. Case No. 500854)  
7 appeal considerations (inc. 1 post. from 8/6/02)  
Old Business: Proposed Amendments to Rules Section 1.18

IX. Adjournment

President Wasserman adjourned the meeting at 7:35 p.m.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
September 3, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

08-30-02P04:14 RCVD

DOCUMENTS DEPT.

AUG 30 2002

SAN FRANCISCO  
PUBLIC LIBRARY

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Vote on Whether to Go Into Closed Session Regarding the Case of The Blaine Family Trust vs. Rent Board (Perlstadt) (Superior Court Case No. 500854) (Pursuant to S.F. Administrative Code Section 67.11{a})

VI. Closed Session re Perlstadt, supra (Pursuant to Government Code Section 54956.9{a})

VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Perlstadt, supra (Pursuant to S.F. Administrative Code Section 67.11{a})

VIII. Report on Any Actions Taken in Closed Session Regarding Perlstadt, supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2})

IX. Consideration of Appeals

A. 2741 Clay St.

AT020146  
(post. from 8/6/02)

The tenant appeals the determination that he is not a "Tenant in Occupancy" pursuant to Rules Section 1.21.

B. 3617 - 17<sup>th</sup> St.

AL020196  
(post. from 8/20/02)

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21.



C. 547 Grove St.

AL020198

The landlord appeals the decision granting claims of unlawful rent increase and decreased housing services.

D. 1566 Church St.

AT020199

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

E. 2620 Laguna St. #2

AL020200

The landlord appeals the decision granting claims of decreased housing services and failure to repair.

F. 1360 Jones St. #801

AT020201

The tenant appeals the determination that they are not a "Tenant in Occupancy" pursuant to Rules Section 1.21 on the grounds that they failed to receive proper notice of the hearing.

G. 883 Sacramento St.

AL020202

The landlord appeals the decision denying a Petition for Extension of Time to Do Capital Improvement Work.

X. Communications

XI. Director's Report

XII. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

XIII. New Business

XIV. Calendar Items

XV. Adjournment



## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

“Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City’s efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.”

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.







**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, September 3, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

SEP 13 2002

SAN FRANCISCO  
PUBLIC LIBRARY

**I. Call to Order**

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:14 p.m.

**II. Roll Call**

Commissioners Present:

Aung; Gruber; Hobson; Marshall; Murphy;  
Wasserman.

Commissioners not Present:

Becker; Justman; Lightner; Mosser.

Staff Present:

Grubb; Wolf.

**III. Approval of the Minutes**

MSC: To approve the Minutes of August 20, 2002.  
(Murphy/Gruber: 5-0)

**IV. Remarks from the Public**

The landlord in the case at 2741 Clay St. (AT020146) informed the Commissioners that he was present. President Wasserman expressed the Board's condolences to Commissioner Becker on the loss of his brother.

**V. Vote on Whether to Go Into Closed Session Regarding the Case of The Blaine Family Trust vs. Rent Board (Perlstadt) (Superior Court Case No. 500854) Pursuant to S.F. Administrative Code Section 67.11(a)**

MSC: To go into Closed Session. (Marshall/Gruber: 5-0)

**VI. Closed Session re Perlstadt, supra, Pursuant to Government Code Section 54956.9(a)**

The Board went into Closed Session from 6:17 to 6:55 p.m. with Deputy City Attorney Randy Riddle to discuss the case of The Blaine Family Trust vs. Rent Board (Perlstadt) (Superior Court Case No. 500854).

**VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Perlstadt, supra.**

MSC: To disclose that the Board has decided to pursue an appeal in the Perlstadt case, and to so inform the public.  
(Marshall/Murphy: 5-0)



VIII. Report on Any Actions Taken in Closed Session Regarding Perlstadt, supra, Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2}

President Wasserman reported that the Board held a Closed Session to discuss the Perlstadt case with its attorney, and voted to pursue an appeal of Judge Robertson's decision in the case.

IX. Consideration of Appeals

A. 2741 Clay St.

AT020146  
(post. from 8/6/092)

The tenant's appeal was filed three weeks late because the hearing was held and the decision issued while the tenant was out of the country.

MSC: To find good cause for the late filing of the appeal.  
(Hobson/Marshall: 4-1)

The landlord filed a petition seeking a determination as to whether there is a "Tenant in Occupancy" at the subject unit. The Administrative Law Judge found that the tenant does not occupy the unit as his principal place of residence but there is a lawful subtenant on the premises, so no rent increase was found to be warranted pursuant to Rules Section 1.21. However, since the subtenant commenced occupancy in February 1996, a rent increase was allowed under Costa-Hawkins. The tenant did not appear at the hearing. On appeal, the tenant claims that the unit is his principal place of residence, which he can prove; and that the landlord had told him he wouldn't proceed with the petition while the tenant was out of the country.

MSC: To accept the appeal and remand the case for a new hearing;  
should the tenant fail to appear, absent extraordinary  
circumstances, no further hearings will be granted.  
(Hobson/Marshall: 4-1; Gruber dissenting)

B. 3617 - 17<sup>th</sup> St.

AL020196  
(post. from 8/20/02)

The landlord filed a petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21. The Administrative Law Judge found that, although the tenant is frequently away from the subject unit, it is where she normally returns exclusive of travel necessitated by employment. The petition was therefore denied. The landlord appeals, asserting that: the Administrative Law Judge considered hearsay statements in formulating her decision after upholding the landlord's objections to such statements, which prejudiced the landlord in that he had no right to cross-examination; the Administrative Law Judge failed to require that the tenant provide evidence as to her residency in New York; the landlord does not have the burden of proving that the tenant owns property elsewhere in order to prevail on a 1.21 petition; the tenant was not specific in accounting for when and where she was residing when she was away from the subject premises; and the tenant collected more rent from the subtenants than she was paying to the landlord, which establishes a commercial use of the unit.

MSC: To accept the appeal to vacate the decision and remand the case  
to the Administrative Law Judge on the record to find that, under



these facts, the tenant is not a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21. (Murphy/Gruber: 4-1; Marshall dissenting)

C. 547 Grove St.

AL020198

The tenant's petition alleging an unlawful rent increase and decreased housing services was granted. The landlord's proposed rent increase from \$666.47 to \$2,450.00 was found to be null and void because the last original occupant of the unit had died seven years prior to a 6.14 notice having been served. Additionally, the landlord was found liable to the tenant in the amount of \$40.00 per month due to loss of use of the back yard. On appeal, the landlord claims that implicit in California law is a covenant of good faith and fair dealing, and the tenant withheld the fact that his roommate had died from the prior and current owners.

MSC: To deny the appeal. (Marshall/Hobson: 5-0)

D. 1566 Church St.

AT020199

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant admits to having mis-calendared the hearing date.

MSC: To accept the appeal and remand the case for a new hearing.  
(Murphy/Marshall: 4-1; Wasserman dissenting)

E. 2620 Laguna St. #2

AL020200

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$951.44 due to insufficient heat in the unit. Additionally, a notice of rent increase was ordered deferred until outstanding code violations on the premises were abated. The landlord appeals, arguing that: the tenant failed to meet his burden of proof; the Administrative Law Judge did not consider any of the landlord's testimony refuting the tenant's allegations; the decision was in contravention of the facts and law; and the tenant has vacated the unit and failed to pay rent for the months of June and July.

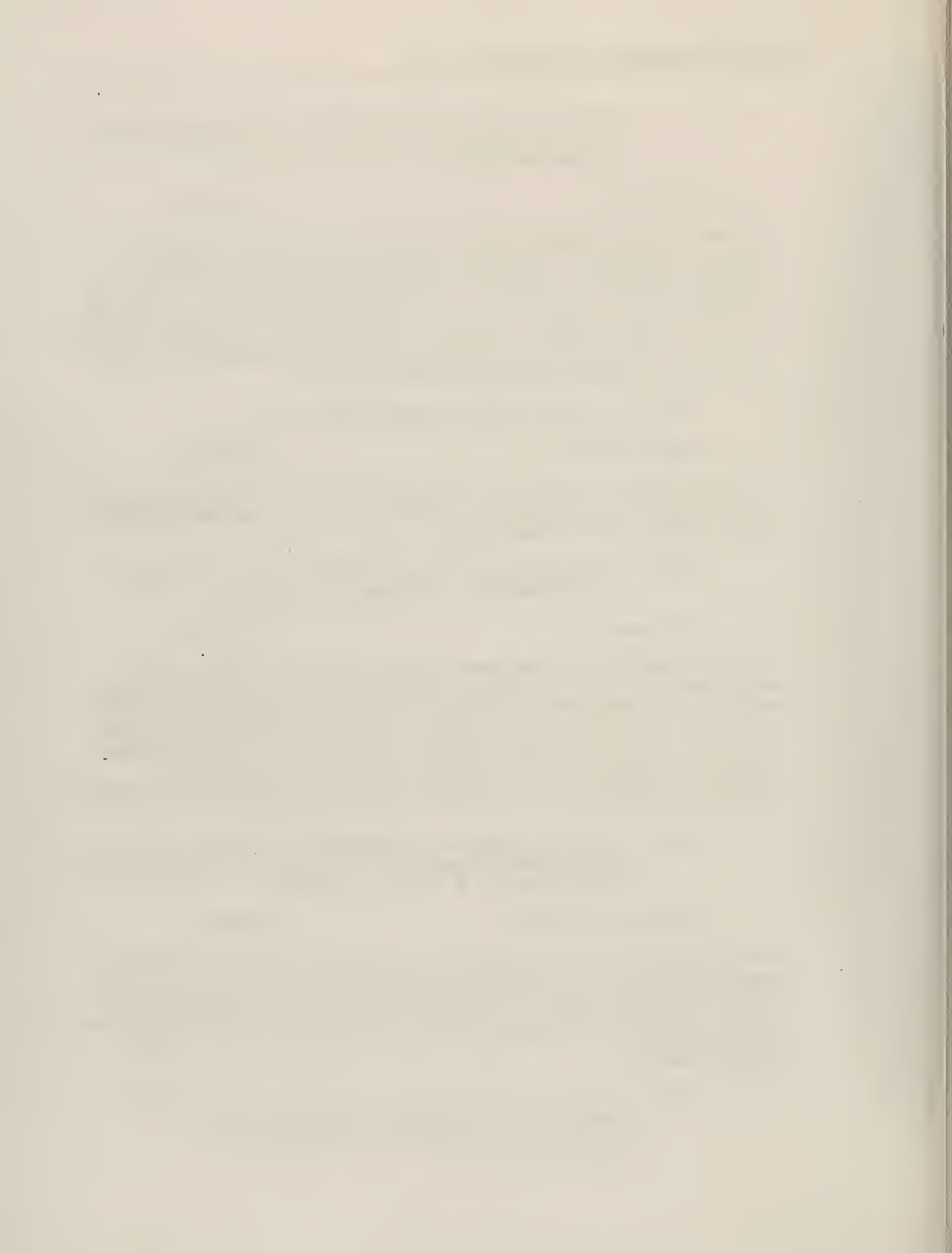
MSC: To deny the appeal; any amounts owing from the tenant to the landlord shall be offset against sums the landlord owes the tenant.  
(Hobson/Marshall: 4-1; Gruber dissenting)

F. 1360 Jones St. #801

AT020201

The landlord's petition for a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21 was granted because it was found that the tenants are a law partnership headquartered in Santa Barbara, who use the subject unit only infrequently. The tenants appeal, claiming that they failed to receive the Notice of Hearing, and attaching the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing;  
should the tenant fail to appear, absent extraordinary  
circumstances, no further hearings will be granted.  
(Murphy/Gruber: 5-0)



G 883 Sacramento St.

AL020202

The landlord filed a Petition for Extension of Time which was denied because the petition was not filed prior to the tenants' being given notice to vacate, although it was clear that the work would take more than three months; and all necessary permits had not been obtained. The landlord appealed, and the case was remanded in order for the Administrative Law Judge to determine the reasonableness of the landlord's estimate of additional time needed to complete the work. This case was consolidated with a second Petition for Extension of Time filed by the landlord. In the remand decision, the Administrative Law Judge determined that the landlord's original estimate of time was too short, and also denied the landlord's second petition because the landlord still did not have all the necessary permits. On appeal, the landlord maintains that the decision is unclear and contradictory, and he requests clarification or that the Board hear the appeal.

MSC: To deny the appeal; however, the Board makes no finding as to the absence or presence of bad faith on the part of the landlord.  
(Murphy/Gruber: 5-0)

X. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a new copy of the Ordinance and a letter from a tenant at Parkmerced protesting what they consider to be excessive rent increases.

XI. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

Executive Director Grubb informed the Board that he would be working with some of the Administrative Law Judges on an alternative draft of proposed changes to Rules Section 1.18, which would include an estimator's valuation of the cost of the substantial rehabilitation work instead of the permit amount. This issue will be discussed further at the next meeting.

XII. Calendar Items

September 10, 2002 - NO MEETING

September 17, 2002

8 appeal considerations

Old Business: Proposed Amendments to Rules Section 1.18

XIII. Adjournment

President Wasserman adjourned the meeting at 8:00 p.m.







NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, 6:00 p.m.,  
September 17, 2002  
25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

SEP 13 2002

SAN FRANCISCO  
PUBLIC LIBRARY

- KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY
- I. Call to Order  
II. Roll Call  
III. Approval of the Minutes  
IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

- A. 1550 Bay St. AT020147 thru -0190  
(cont. from 8/20/02)

Forty-four tenants appeal the remand decision adjusting the amounts certified for capital improvement costs and establishing a repayment plan.

- B. 21 Byron Ct. AL020206

The landlord appeals the decision ordering the refund of rent overpayments and granting claims of decreased housing services.

- C. 334-336 - 2<sup>nd</sup> Ave. AL020203

The landlord appeals the decision setting the initial rent for a non-comparable replacement unit.

- D. 336 - 2<sup>nd</sup> Ave. AL020204

The landlord appeals the decision granting a claim of decreased housing services due to rodent infestation.

- E. 1050 Post St. #35 AT020205

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

- F. 1955 Lyon St. AT020208



One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

G. 1383 – 18<sup>th</sup> Ave. `

AT020209

The tenant appeals the decision finding that recovery of rent overpayments must be sought by the subtenant against the estate of the Master Tenant.

H. 715 Haight St. #3

AT020207

The tenant appeals the determination that he is not a "Tenant in Occupancy" pursuant to Rules Section 1.21, claiming non-receipt of the notice of hearing.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

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# MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, September 17, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

SEP 26 2002

SAN FRANCISCO  
PUBLIC LIBRARY

## I. Call to Order

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:13 p.m.

## II. Roll Call

Commissioners Present:

Gruber; Justman; Lightner; Marshall; Mosser;  
Wasserman.

Commissioners not Present:

Aung; Becker; Hobson; Murphy.

Staff Present:

Grubb; Wolf.

Commissioner Lightner went off the record at 6:30 p.m.

## III. Approval of the Minutes

MSC: To approve the Minutes of September 3, 2002.  
(Gruber/Marshall: 3-0)

## IV. Remarks from the Public

- A. Robert Pender of the Parkmerced Residents' Organization (PRO) told the Board that Parkmerced management is offering to relocate the tenants in 33 units, at their same rent, if they do not wish to live next door to the new Montessori school that is being constructed. Mr. Pender considers this a wrongful eviction attempt, and believes that it is being done to "scare and intimidate the tenants into not voting no on Proposition R."
- B. James O'Donnell, a former tenant at 1550 Bay St. (AT020147 thru -0190), referred to a letter he had previously written the Board accusing Commissioner Murphy of having a conflict of interest when he voted on the tenant appeals concerning 1550 Bay Street on February 26, 2002. Mr. O'Donnell attempted to introduce additional evidence of Commissioner Murphy's alleged conflict, which he said contradicts statements made by Commissioner Murphy and recorded in the Minutes. Mr. O'Donnell told the Board that the City Attorney should review the federal court file regarding the alleged discrepancies.
- C. Arnold Cohn, a tenant at 1550 Bay Street, inquired regarding the status of the decision on tenant claims of decreased housing services during a prolonged construction project, and was told it would probably be going out by the end of this month.





V. Consideration of Appeals

A. 1550 Bay St.

AT020147 thru -0190  
(cont. from 8/20/02)

The landlord's petition for certification of capital improvement costs, including a large waterproofing project, to 94 out of 241 units was granted in the amount of almost \$3,200,000.00. 48 tenants, represented by the same attorney, filed a joint appeal. At the meeting on February 26, 2002, the joint appeal was accepted and remanded to the Administrative Law Judge on the issue of allocation of the costs of installing waterproofing materials between the ceiling of the commercial units and the floor of the twelve tenant decks above the ceiling of the commercial units; to determine the use of the old laundry room space as of the date of the close of the record, or March 30, 2001, for purposes of allocation of those costs; and to establish a repayment schedule for sums owing from the tenants to the landlord. 44 tenants represented by the same attorney now appeal the remand decision, claiming that: the tenants were prejudiced because the landlord violated the pre-hearing order regarding evidence; the tenant representatives understood the stipulation reached between the parties regarding the costs of the waterproofing materials as applying only to the appealing tenants; and the entire passthrough should be barred by Proposition H.

MSC: To deny the appeals. (Lightner/Gruber: 4-0)

B. 21 Byron Ct.

AL020206

Two tenants filed petitions alleging decreased housing services and asking for determinations as to whether their current rents are lawful. Unlawful rent increases were determined to have been given, and the landlord was found liable to one tenant in the amount of \$97.00 and \$2,380.00 to the other tenant. Additionally, the landlord was found liable for rent reductions to both tenants for decreased housing services due to the presence of an additional six to nine individuals residing at the subject unit. On appeal, the landlord asserts that: the premises are a single family dwelling that is exempt from rent control pursuant to Costa-Hawkins; the rent increase was justified because the tenant moved from a smaller room that was uninhabitable; the tenants failed to meet their burden of proving decreased housing services, and did not provide notice to the landlord; the living room was not available temporarily while the new tenants were moving in; and the Administrative Law Judge exhibited bias against the landlord and in favor of the tenants.

MSC: To deny the appeal. (Marshall/Gruber: 3-0)

C. 334-336 – 2<sup>nd</sup> Ave.

AL020203

The landlord filed a petition seeking a determination of the initial rent for a non-comparable replacement unit. The Administrative Law Judge set the initial rent at \$970.00. On appeal, the landlord maintains that the decision is in error in ruling that there are no banked rent increases available to the landlord.

After discussion, it was the consensus of the Board to continue consideration of this case to the meeting on October 15<sup>th</sup>.



D. 334-336 – 2<sup>nd</sup> Ave.

AL020204

The tenants' petition alleging decreased housing services was granted and the landlords were found liable to the tenants in the amount of \$883.60 due to rodent infestation in the unit and a defective oven. On appeal, the landlords assert that the rat infestation was caused by the tenants themselves.

MSC: To deny the appeal. (Gruber/Marshall: 3-0)

E. 1050 Post St. #35

AT020205

The landlord's petition for certification of capital improvement costs for nineteen of forty units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Gruber: 3-0)

F. 1955 Lyon St.

AT020208

The tenant's appeal was filed over four months late because the tenant claims not to have understood that retroactive amounts would be due and owing after she had vacated the building.

MSC: To find good cause for the late filing of the appeal.  
(Marshall/Gruber: 3-0)

The landlords' petition for certification of capital improvement costs for five of six units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Gruber: 3-0)

G. 1383 – 18<sup>th</sup> Ave.

AT020209

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$1,970.50. The Administrative Law Judge found that the tenant was a subtenant of a master tenant during the period March 1, 1999 through September 30, 2001 and that any claim regarding overpayments during this period would have to be made against the estate of the master tenant. On appeal, the tenant argues that: the decision allows the landlord's wrongful retention of an unlawful rent increase from the individual who actually paid it; the master tenant died intestate and without property, so there is no probate or estate against which any claim could have been lodged; the master tenant did not raise the tenant's rent, but was merely a conduit between the tenant and the landlord; the tenant became a co-tenant upon the landlord having demanded the rent increase of him; and subtenants have the same rights as tenants in seeking recovery of rent overpayments under the Ordinance.

After discussion, it was the consensus of the Board to continue consideration of this case to the meeting on October 15<sup>th</sup>.

H. 715 Haight St. #3

AT020207



The landlord's petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21 was granted. The tenant appeals the determination, claiming non-receipt of the notice of hearing, and attaching the requisite Declaration.

MSC: To accept the appeal and remand the case for a new hearing at the convenience of the landlord; should the tenant fail to appear, absent extraordinary circumstances, no further hearings will be granted. (Gruber/Marshall: 3-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

- A. A Memorandum from the Office of the City Attorney regarding Commissioner Murphy's alleged conflict of interest in voting on the tenant appeals concerning the property at 1550 Bay St. (AT020147 thru -0190).
- B. Results of the "Tenant Survey", which is part of the Housing Study commissioned by the Board of Supervisors.
- C. The Department's Annual Statistical Report.
- D. Revised copies of the Department's informational brochures, which have been updated to reflect recent changes in the law.
- E. A letter from Parkmerced management, offering to relocate tenants who do not wish to live next door to a soon-to-be-constructed Montessori school, at their same rent.

#### VII. Director's Report

Executive Director Grubb informed the Board that he would be on vacation in Bali from September 19<sup>th</sup> through October 6<sup>th</sup>.

#### VIII. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

Due to the absence of Commissioner Aung, and the fact that Commissioner Murphy will not be at the meeting on October 1<sup>st</sup>, this issue was continued to the meeting on October 15<sup>th</sup>.

#### IV. Remarks from the Public (cont.)

- D. Mark Weiss, a tenant at 336 – 2<sup>nd</sup> Ave. (AL020204), thanked the Board for putting one of the landlord's two appeals to rest.
- E. Robert Pender asked if PRO could obtain a copy of the "Tenant Survey", which was provided to him.



- F. James O'Donnell, a former tenant at 1550 Bay St., advised the Board to "discharge their duties with integrity." Mr. O'Donnell said that it would be best for Commissioners to disclose any potential conflicts or anything that could lead to the appearance of impropriety. He suggested that in large cases like 1550 Bay, the Rent Board should get involved and try to mediate "before the train wreck." He also recommended that the Board set more reasonable amortization schedules for capital improvement work.

IX. Calendar Items

September 24, 2002 - NO MEETING

October 1, 2002

8 appeal considerations

Old Business:

The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)  
Rules and Regulations Section 1.21

X. Adjournment

President Wasserman adjourned the meeting at 7:16 p.m.







SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 6:00 p.m.,  
October 1, 2002  
25 Van Ness Avenue, #70, Lower Level

**Residential Rent Stabilization  
and Arbitration Board**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

**AGENDA**

**DOCUMENTS DEPT.**

SEP 26 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG

II. Roll Call

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

III. Approval of the Minutes

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

IV. Remarks from the Public

NEVEO MOSSER

BARTHOLOMEW MURPHY

**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 402 Haight St. L020210

The landlord appeals the decision partially certifying capital improvement costs.

B. 1310 Turk St. #406 AL020211

The landlord appeals the decision granting claims of decreased housing services.

C. 902 Divisadero #202 AL020212

The landlord appeals the remand decision granting claims of decreased housing services.

D. 218 Union St. #3 AL020213

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

E. 3610 Taraval AL020214 & AT020223

The landlord and tenant appeal the decision partially granting claims of decreased housing services.



F. 307 – 30<sup>th</sup> Ave.

AT020216

The tenant appeals the decision partially granting claims of decreased housing services.

G. 1050 Post St. #44

AT020215

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

H. 1693 Market St. #502

AT020217

The tenants appeal the dismissal of their petition alleging decreased housing services due to their failure to appear at the properly noticed hearing.

VI. Communications

VII. Director's Report

VIII. Old Business

The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)  
Rules and Regulations Section 1.21

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.





MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.

MAYOR

JOSEPH GRUBB

EXECUTIVE DIRECTOR

Tuesday, October 1, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

DOCUMENTS DEPT.

OCT 15 2002

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I. Call to Order

President Wasserman called the meeting to order at 6:09 p.m.

II. Roll Call

Commissioners Present:	Aung; Becker; Mosser; Wasserman.
Commissioners not Present:	Gruber; Hobson; Lightner; Mosser; Murphy.
Staff Present:	Wolf.

Commissioner Justman appeared on the record at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 17, 2002.  
(Mosser/Wasserman: 4-0)

IV. Remarks from the Public

A. Eugene Chan, the landlord at 1310 Turk St. #406 (AL020211), informed the Board that a frequent complaint he hears about the Rent Board concerns the lack of due process protections. Mr. Chan encouraged the Commissioners to demonstrate that parties before the Board have the same rights that they would have in court.

V. Consideration of Appeals

A. 402 Haight St.

L020210

The landlord's petition for certification of capital improvement costs was granted, in part. However, the Administrative Law Judge found that claimed costs for new carpet and water heaters were not proved, and only those costs that were sufficiently documented were therefore certified. On appeal, the landlord asserts that proof of cost and proof of payment were submitted and verified by the landlord under oath; and that the Administrative Law Judge failed to request further documentation, testimony or declarations subsequent to the hearing.

MSC: To deny the appeal. (Becker/Aung: 4-0)

B. 1310 Turk St. #406

AL020211





The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$2,500.00 due to leaks resulting in moist living room walls. Additionally, the landlord was found not to have performed requested repairs required by law, and an annual increase was ordered deferred. On appeal, the landlord's property manager claims not to have received the notice of hearing, because the notice was sent to the wrong address and to the wrong name. Additionally, the landlord told the property manager that the hearing was to be held on a different date.

MSC: To accept the appeal and remand the case for a new hearing.  
(Mosser/Aung: 4-0)

C. 902 Divisadero #202

AL020212

The landlord's appeal was filed three months late because the landlord sold his business, and did not receive a copy of the decision at the time it was issued.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Mosser: 4-0)

The tenant's petition alleging decreased housing services was granted, and the landlord was found liable to the tenant in the amount of \$6,280.00 due to serious habitability defects on the premises. The landlord had failed to appear at the hearing, and claimed that he had not received notice of the hearing upon appeal. His appeal was accepted and remanded for another hearing. In the remand decision, the Administrative Law Judge reduced the landlord's liability to the amount of \$5,360.00. The landlord again appeals, claiming that the tenant filed his complaints out of revenge for the landlord having had him arrested on Halloween; and that the apartment was in good condition when the tenant moved in.

MSC: To deny the appeal. (Becker/Aung: 4-0)

D. 218 Union St. #3

AL020213

The landlord's petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21 was denied. Although the tenant has a homeowner's exemption on a property in Sacramento, he is separated from his wife and does not commute from Sacramento to his job in Silicone Valley. Rather, he stays as a "guest" several nights a week at a friend's house in Los Altos. The Administrative Law Judge therefore found that the San Francisco unit is the tenant's principal place of residence and usual place of return. The landlord appeals, maintaining that: all the indices of residency contained in Section 1.21 point to Sacramento as the tenant's principal place of residence; the landlord resides in the building and knows from personal knowledge that the tenant is only on the premises 1-2 nights per week; and the San Francisco unit is the tenant's pied a terre which he uses for business and personal purposes.

After discussion, it was the consensus of the Board to continue this appeal to the meeting on October 15<sup>th</sup>, when there will be more Commissioners in attendance.

E. 3610 Taraval

AL020214 & AT020223

The tenant's appeal was filed nine days late because the tenant was traveling at the time the decision was issued.



MSC: To find good cause for the late filing of the appeal.  
(Becker/Mosser: 4-0)

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$1,380.00 due to an inoperable window and lack of heat in the unit. The tenants' failure to repair claim was denied because the landlord had abated the conditions prior to the effective date of the annual rent increase. The landlord appeals, asserting that: it was the tenants' responsibility to contact PG&E and have the gas to the heater turned on; the landlord had no way of knowing that the heater was not working; the tenants failed to request that the window be repaired when a repair person was in the unit attending to another problem, and failed to provide notice to the landlord of the conditions complained of in the petition; the repairs were effectuated within one month after receipt of the Notice of Violation; it is the tenants' testimony that lacks credibility, rather than the landlord's; and the tenants have failed to meet their burden of proof. The tenant also appeals as to the claims that were denied, maintaining that: the decision is incorrect as to the date the tenant notified the landlord regarding the problem with the defective toilet; the tenant was not provided with a safe and accessible place to store garbage receptacles; and the landlord had constructive notice of the condition of the back yard, which was unsafe and unsightly.

MSC: To recuse Commissioner Aung from consideration of these appeals. (Becker/Justman: 4-0)

MSC: To deny both the tenant's and the landlord's appeals.  
(Becker/Mosser: 3-0)

F. 307 – 30<sup>th</sup> Ave.

AT020216

The tenant's appeal was filed three days late because the tenant was in New York visiting family over the holiday weekend.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Mosser: 4-0)

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$439.00 due to a defective bathroom sink and the presence of mildew in the unit. On appeal, the tenant claims that: the base rent amount in the decision is incorrect; work done in the unit was shoddy, incomplete and not up to code; and there is remaining work that needs to be done in the unit.

MSC: To deny the appeal without prejudice to the tenant filing a new petition. (Becker/Mosser: 4-0)

G. 1050 Post St. #44

AT020215

The landlord's petition for certification of capital improvement costs to 19 of 40 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Aung/Mosser: 4-0)



H. 1693 Market St.

AT020217

The tenants' petition alleging decreased housing services was dismissed due to their failure to appear at the properly noticed hearing. On appeal, the tenants claim not to have received notice of the hearing, and attach the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.  
(Becker/Aung: 4-0)

VII. Old Business

The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)  
Rules and Regulations Section 1.21

The Board voted to pursue an appeal of the court's decision granting the landlord's Writ at their meeting on September 3<sup>rd</sup>. At that time, Deputy City Attorney Randy Riddle informed the Commissioners that it might be beneficial to the appeal if the Board clarified Rules Section 1.21 to make it clear that tenants can occupy more than one unit in a building as their principal place of residence. President Wasserman asked that staff draft such language, but that it also be made clear that the units had to have been rented to the tenant(s) in good faith and with the landlord's knowledge. Deputy Director Wolf advised the Board that Senior Administrative Law Judge Tim Lee has drafted such language. Additionally, Deputy City Attorney Scott Dickey has proposed additional language to make it clear that tenants must really live in the units, and that a tenant could meet the indicia of residency outlined in the regulation, but still not reside in the unit as their principal place of residence. This issue was continued to the meeting on October 15<sup>th</sup>. Both versions of the proposed language will be distributed to the Commissioners prior to that meeting.

IV. Remarks from the Public (cont.)

- B. Jamie Ho, the tenant in the case at 3610 Taraval (AT020223), expressed confusion regarding the disposition of her appeal.
- C. Mary Kwan, the landlord's representative in the case at 3610 Taraval (AL020214), told the Commissioners that she hoped they'd consider her appeal.

VIII. Calendar Items

October 8, 2002 - NO MEETING

October 15, 2002

10 appeal considerations (2 cont. from 9/17/02; 1 cont. from 10/1/02)

Old Business:

- A. Rules & Regulations Section 1.21 (Perlstadt)
- B. Proposed Amendments to Rules Section 1.18

New Business:

Rules and Regulations Section 6.10(a)

October 22, 2002 – NO MEETING



October 29, 2002

12 appeal considerations

November 5, 2002 – NO MEETING (Election Day)

Additional meetings in November will be on the 12<sup>th</sup> and 19<sup>th</sup>; both meetings will begin at 6:30 p.m.

IX. Adjournment

President Wasserman adjourned the meeting at 7:05 p.m.







**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:00 p.m.,  
October 15, 2002

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

10-15-02 4:00 PM / 10

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

DOCUMENTS DEPT.

OCT 15 2002

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PUBLIC LIBRARY

NOTE: Pursuant to Section 2.13(e) of the R, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 1601 Lombard St. #12 AL020218

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

B. 3634 - 23<sup>rd</sup> St. AL020219

The master tenant appeals the decision finding that the subtenants paid more than their proportional share of the rent pursuant to Rules Section 6.15C(3).

C. 270 - 28<sup>th</sup> St. AT020220

The tenants appeal the decision partially granting claims of decreased housing services.

D. 623 A 15<sup>th</sup> Ave. AL020221

The landlord appeals the remand decision granting a claim of decreased housing services due to the landlord's failure to consent to a replacement roommate.

E. 2045 Hayes St. #2 AL020222

The master tenant appeals the decision granting refund of rent overpayments pursuant to Rules and Regulations Section 6.15C(3).

F. 132-138 Albion St. AL020224



The landlords appeal the dismissal of their petition seeking certification of capital improvement costs due to their failure to appear at the hearing.

G. 2245 Beach St. #2

AL020225

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21.

H. 334-336 – 2<sup>nd</sup> Ave.

AL020203  
(cont. from 9/17/02)

The landlord appeals the decision determining the initial rent for a non-comparable replacement unit.

I. 1383 – 18<sup>th</sup> Ave.

AT020209  
(cont. from 9/17/02)

The tenant appeals the decision holding that recovery of rent overpayments must be sought by the tenant against the estate of the master tenant.

J. 218 Union St. #3

AL020213  
(cont. from 10/1/02)

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21.

VI. Communications

VII. Director's Report

VIII. Old Business

A. The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)  
Rules and Regulations Section 1.21

B. Proposed Amendments to Rules and Regulations Section 1.18

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

Rules and Regulations Section 6.10(a)

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

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# MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN

PRESIDENT  
5/02

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, October 15, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

OCT 25 2002

## I. Call to Order

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:05 p.m.

## II. Roll Call

Commissioners Present:  
Commissioners not Present:  
Staff Present:

Becker; Gruber; Lightner; Marshall; Murphy.  
Hobson; Mosser; Wasserman.  
Grubb; Wolf.

Commissioner Justman appeared on the record at 6:21 p.m.; Commissioner Aung arrived at the meeting at 6:48 p.m. Commissioner Becker went off the record at 7:55 p.m.

## III. Approval of the Minutes

MSC: To approve the Minutes of October 1, 2002.  
(Becker/Gruber: 4-0)

## IV. Consideration of Appeals

### A. 1601 Lombard St. #12

AL020218

The landlord's petition seeking a determination as to whether there are any "Tenants in Occupancy" at the subject unit was denied, because the Administrative Law Judge found that two of the current occupants reside at the unit as their principal place of residence. On appeal, the landlord argues that: the tenant took actions after the petition was filed to establish occupancy in the unit but, at the time the petition was filed, she was not a "Tenant in Occupancy"; the tenant does not qualify for protection under the Ordinance because she has been residing out of state for three years; by having sublet the unit, the tenant became a landlord, and had no right to occupy the unit; the decision is beyond the authority of the Rent Board, because it expands the definition of "Tenant in Occupancy"; and the tenant in this case has unclean hands, which should have factored in to the decision.

After discussion, it was the consensus of the Board to continue this case to the next meeting in order for staff to contact the tenant and find out whether she has moved back in to the subject unit.

### B. 3634 - 23<sup>rd</sup> St.

AL020219





The tenants' petitions alleging that they paid more than their proportional share of the rent were granted, and the master tenant was found liable in the amount of \$1,133.67 to one of the subtenants and \$1,446.90 to the other. The master tenant appeals, claiming that: the Administrative Law Judge exhibited bias against her; the decision was based on a square footage allocation of the rent only, and consideration was not given to the additional housing services that she provided, the procurement of which was costly; the subtenants were not precluded from availing themselves of areas of the unit used exclusively by her; a master tenant should be allowed a "surcharge" for their time and delivery of additional housing services; the subtenants failed to give proper 30-day notice prior to moving out; the petition was not timely filed; and the regulation should not apply to subtenants who have vacated the unit.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

C. 270 – 28<sup>th</sup> St.

AT020220

The tenants' petition claiming several decreased housing services was denied, except that the landlord was found liable in the amount of \$265.50 due to the condition of the exterior rear stairs to the unit. On appeal, the tenants maintain: that evidence and testimony introduced by the tenants as to the noisy garage door opener was not taken into account by the Administrative Law Judge; that the fact that no Notice of Violation was issued is irrelevant; and correspondence from other tenants regarding the petitioners should be stricken from the record.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

D. 623 A 15<sup>th</sup> Ave.

AL020221

The tenant's petition alleging decreased housing services due to the landlord's failure to allow a replacement roommate was denied because the Administrative Law Judge found that the tenant had requested, without good cause, the landlord's consent to a new roommate more than once in a 12-month period. Upon appeal by the tenant, the Board found that good cause existed under the facts of this case, and a commensurate rent reduction was granted on remand. The landlord appeals the remand decision, asserting that the original disallowance of the tenant's petition and subsequent reversal upon appeal created a 4-month delay for which he should not be held liable.

MSC: To deny the appeal. (Becker/Marshall: 3-1; Gruber dissenting)

E. 2045 Hayes St. #2

AL020222

Three subtenants filed a petition to determine whether their rents on August 22, 2001 were more than the subtenants' proportional share of the total rent paid to the landlord by the Master Tenant. The Administrative Law Judge found that two of the three subtenants were paying more than their proportionate share of the rent, and the Master Tenant was found liable to the subtenants for rent overpayments. The Master Tenant, who failed to appear at the hearing, appeals, alleging that: she was delayed by a traffic accident, which caused her to miss the hearing; a common living room was only used by two of the subtenants; two of the subtenants knew they would be sharing a room when they moved into the unit; the Master Tenant's room was the least desirable of all the bedrooms; and a contract between she and the subtenants should not be considered legally valid.



MSC: To accept the appeal and remand the case for a new hearing. Should the Master Tenant fail to appear again, absent extraordinary circumstances, no further hearings will be granted. (Becker/Marshall: 4-1; Gruber dissenting)

F. 132-138 Albion St.

AL020224

The landlords' petition for certification of capital improvement costs was dismissed due to their failure to appear at the properly noticed hearing. On appeal, the landlords claim not to have received notice of the hearing, and attach the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing. If the landlord fails to provide a viable address and therefore misses the next hearing, no further hearings will be granted. (Becker/Lightner: 4-1; Gruber dissenting)

G. 2245 Beach St. #2

AL020225

The landlord filed a petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21 and whether a rent increase is justified pursuant to Rules and Regulations Sections 1.21, Rules Section 6.14, and/or Costa-Hawkins. The Administrative Law Judge found that, although the tenant resides at a lodge in the Sierras he leases during the summer months, the subject unit is still the tenant's principal place of residence and therefore no rent increase was warranted. The landlord appeals, claiming that: the tenant has failed to meet his burden of proving that the subject unit is his principal place of residence; the tenant should be required to furnish tax documents showing that he does not claim a homeowner's exemption on property he owns in Santa Cruz; the tenant returns to the lodge in the Sierras as frequently as he returns to the subject unit; and it is unfair for the tenant to be able to evict his sub-tenants upon his return, since he would not be able to do so were he an owner of the property.

MSC: To deny the appeal. (Becker/Marshall: 4-1; Gruber dissenting)

H. 334-336 – 2<sup>nd</sup> Ave.

AL020203  
(cont. from 9/17/02)

The landlord filed a petition seeking a determination of the initial rent for a non-comparable replacement unit. The Administrative Law Judge set the initial rent at \$970.00. On appeal, the landlord maintains that the decision is in error in ruling that there are no banked rent increases available to the landlord.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to find that, under the facts of this case, there is a continuing tenancy and the landlord does not lose the right to impose banked increases prospectively, with the issuance of proper notice. (Lightner/Gruber: 5-0)

I. 1383 – 18<sup>th</sup> Ave.

AT020209  
(cont. from 9/17/02)

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$1,970.50. The Administrative Law



Judge found that the tenant was a subtenant of a master tenant during the period March 1, 1999 through September 30, 2001 and that any claim regarding overpayments during this period would have to be made against the estate of the master tenant. On appeal, the tenant argues that: the decision allows the landlord's wrongful retention of an unlawful rent increase from the individual who actually paid it; the master tenant died intestate and without property, so there is no probate or estate against which any claim could have been lodged; the master tenant did not raise the tenant's rent, but was merely a conduit between the tenant and the landlord; the tenant became a co-tenant upon the landlord having demanded the rent increase of him; and subtenants have the same rights as tenants in seeking recovery of rent overpayments under the Ordinance.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine how much of the wrongful rent increase was paid by the subtenant. Any amount that was wrongfully paid by the subtenant shall be determined to have been held in a constructive trust by the landlord and shall be refunded to the subtenant. A hearing will be held only if necessary.  
(Lightner/Gruber: 5-0)

J. 218 Union St. #3

AL020213  
(cont. from 10/1/02)

The landlord's petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to Rules Section 1.21 was denied. Although the tenant has a homeowner's exemption on a property in Sacramento, he is separated from his wife and does not commute from Sacramento to his job in Silicone Valley. Rather, he stays as a "guest" several nights a week at a friend's house in Los Altos. The Administrative Law Judge therefore found that the San Francisco unit is the tenant's principal place of residence and usual place of return. The landlord appeals, maintaining that: all the indices of residency contained in Section 1.21 point to Sacramento as the tenant's principal place of residence; the landlord resides in the building and knows from personal knowledge that the tenant is only on the premises 1-2 nights per week; and the San Francisco unit is the tenant's pied a terre which he uses for business and personal purposes.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the decision and find, under the facts of this case, that the tenant is not a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21. (Gruber/Lightner: 5-0)

#### V. Communications

The Commissioners received correspondence concerning cases on the calendar.

#### VI. Director's Report

Executive Director Joe Grubb informed the Board that new counselor Jason Stein and returning Administrative Law Judge Vanessa Davenport have come on board. Kathy Chau, a new 1424 Clerk Typist will begin on November 4<sup>th</sup>. The department will be restricted to hiring just two temporary Administrative Law Judges due to budgetary reasons.

#### VII. Old Business



A. The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)  
Rules and Regulations Section 1.21

The Board had voted to pursue an appeal of the court's decision granting the landlord's Writ at their meeting on September 3<sup>rd</sup>. At that time, Deputy City Attorney Randy Riddle informed the Commissioners that it might be beneficial to the appeal if the Board clarified Rules Section 1.21 to make it clear that tenants can occupy more than one unit in a building as their principal place of residence. President Wasserman asked that staff draft such language, but that it also be made clear that the units had to have been rented to the tenant(s) in good faith and with the landlord's knowledge. Senior Administrative Law Judge Tim Lee drafted such language. Additionally, Deputy City Attorney Scott Dickey proposed additional language to make it clear that tenants must really live in the units, and that a tenant could meet the indicia of residency outlined in the regulation, but still not reside in the unit as their principal place of residence. The Deputy Director distributed both versions of the proposed language and discussion of this issue was continued to the October 29<sup>th</sup> meeting.

B. Proposed Amendments to Rules and Regulations Section 1.18

Discussion of this issue was continued to the meeting on October 29<sup>th</sup>.

VIII. New Business

Rules and Regulations Section 6.10(a)

In March of 2002, the Board amended Rules and Regulations Section 6.10(e) to provide that only the owner who incurred increased debt service and/or property tax costs could file a petition to pass through such costs to tenants. The Deputy Director informed the Board that there is a pending situation where other costs incurred by a prior owner, specifically water and repairs, are being petitioned for. Ms. Wolf asked the Board if they wished to further amend the regulation to make it clear that all expenses must have been incurred by the owner who is filing the petition. The Commissioners requested that the City Attorney be consulted regarding the effect of amending a regulation on pending cases, filed before the effective date of the amendment.

IX. Calendar Items

October 22, 2002 - NO MEETING

October 29, 2002

12 appeal considerations (1 cont. from 10/15/02)

Old Business:

- A. Rules and Regulations Section 1.21 (Perlstadt)
- B. Proposed Amendments to Rules and Regulations Section 1.18
- C. Rules and Regulations Section 6.10(a)

November 5, 2002 - NO MEETING (Election Day)







Additional meetings in November will be on the 12<sup>th</sup> and 19<sup>th</sup>; both meetings will begin at 6:30 p.m.

X. Adjournment

Vice-President Marshall adjourned the meeting at 8:30 p.m.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT  
/02  
POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, 6:00 p.m.,  
October 29, 2002  
25 Van Ness Avenue, #70, Lower Level

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

- A. 1601 Lombard #12 AL020218  
(cont. from 10/15/02)

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

- B. 311 - 11<sup>th</sup> Ave. #2 AT020231

The tenant appeals the determination that he is not a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

- C. 1550 Bay #407, 130 & 247 AT020226 thru -28

Three tenants appeal the repayment plan established by the Administrative Law Judge in the Decision on Remand, requesting credit for sums already paid.

- D. 1115 Post #19 & #1 AT020229 &

Two tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

- E. 811 - 32<sup>nd</sup> Ave. (Upstairs) AT020230

The tenant appeals the decision denying a claim of decreased housing services due to alleged toxic odors on the premises.

- F. 914 Wisconsin #3 AT020232



The tenant appeals the decision denying claims of unlawful rent increase, decreased housing services and failure to repair.

G. 3949-51 – 19<sup>th</sup> St. AL020233

The landlord appeals the decision partially granting certification of capital improvement costs.

H. 553 & 555 Arballo Dr. AT020234 & -35

The tenants appeal the decision certifying the costs of a new roof.

I. 20 Fuente Ave. AT020240

The tenant appeals the decision certifying the costs of a new roof.

J. 454 Arballo Dr. AT020239

The tenant appeals the decision certifying the costs of a new roof.

K. 608 Gonzalez Dr. AT020236

The tenant appeals the decision certifying the costs of a new roof.

L. 116 & 118 Grijalva Dr. AT020237 & -38

The tenants appeal the decision certifying the costs of a new roof.

VI. Communications

VII. Director's Report

VIII. Old Business

A. The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)  
Rules and Regulations Section 1.21

B. Proposed Amendments to Rules and Regulations Section 1.18

C. Rules and Regulations Section 6.10(a)

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.







**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, October 29, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:19 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Lightner; Marshall; Murphy;  
Wasserman.

Commissioners not Present:

Justman; Hobson; Mosser.

Staff Present:

Gartzman; Grubb; Wolf

DOCUMENTS DEPT.

Commissioner Aung appeared on the record at 6:50 p.m.

NOV - 7 2002

III. Approval of the Minutes

MSC: To approve the Minutes of October 15, 2002.  
(Marshall/Becker: 5-0)

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IV. Remarks from the Public

A. Robert Pender of the Parkmerced Residents' Organization (PRO) informed the Board that residents of Parkmerced are facing a number of increases in their rent: increases based on increased operating expenses; PG&E passthroughs; passthroughs for painting of the towers apartments; passthroughs for new roofs in the garden apartments; and capital improvement passthroughs for landscaping. Mr. Pender believes that Parkmerced management is trying to get rid of older tenants in favor of new tenants who will pay market rents.

V. Consideration of Appeals

A. 1601 Lombard St. #12

AL020218

The landlord's petition seeking a determination as to whether there are any "Tenants in Occupancy" at the subject unit was denied, because the Administrative Law Judge found that two of the current occupants reside at the unit as their principal place of residence. On appeal, the landlord argues that: the tenant took actions after the petition was filed to establish occupancy in the unit but, at the time the petition was filed, she was not a "Tenant in Occupancy"; the tenant does not qualify for protection under the Ordinance because she has been residing out of state for three years; by having sublet the unit, the tenant became a landlord, and had no right to occupy the unit; the decision is beyond the authority of the Rent Board, because it expands the definition of "Tenant in Occupancy"; and the tenant in this case has unclean hands,





which should have factored in to the decision. After discussion at the meeting on October 15<sup>th</sup>, it was the consensus of the Board to continue this case in order for staff to contact the tenant and find out whether she has moved back in to the subject unit. Evidence of her reoccupancy of the unit was furnished by the tenant. In the absence of Commissioner Justman, who had begun consideration of this case, the appeal was further continued to the meeting on November 19<sup>th</sup>.

B. 311 – 11<sup>th</sup> Ave. #2

AT020231

The landlord's petition seeking a determination as to whether there is a "Tenant in Occupancy" on the premises was granted, and a rent increase from \$185.38 to \$575.00 per month was approved because it was found that the tenant resides in a condominium that he owns. On appeal, the tenant asserts that Rules and Regulations Section 1.21 violates due process because the Rent Board did not notify tenants not in occupancy of its passage and allow them the opportunity to "cure" by moving back in to the unit.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

C. 1550 Bay #407, 130 & 247

AT020226 thru -28

The tenants' appeals were filed two months late and no good cause reason for the late filing was furnished.

MSC: To find no good cause for the late filing of the appeals. The Decision is therefore final.  
(Lightner/Gruber: 3-2; Becker, Marshall dissenting)

D. 1115 Post #19 & #1

AT020229 & -44

The landlord's petition for certification of capital improvement costs to seven of twenty units was granted. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit #19 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #1 and remand the case for a hearing on the tenants' claim of financial hardship.  
(Becker/Marshall: 5-0)

E. 811 – 32<sup>nd</sup> Ave. (Upstairs)

AT020230

The tenant's petition alleging decreased housing services due to toxic odors at the premises was denied because the Administrative Law Judge found that the tenant had failed to meet her burden of proof. On appeal, the tenant claims that: she submitted sufficient evidence to support her claim; in addition to the implied warranty of habitability, the landlord breached the covenant of quiet enjoyment; the decision was prejudiced against her; there are factual errors in the decision; the landlord's witness is actually the landlord of the property; and the landlord's motivation is eviction, and not resolution of the problem.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)



F. 914 Wisconsin #3

AT020232

The tenant filed a petition alleging an unlawful rent increase, decreased housing services and the landlord's failure to repair, which was denied. The Administrative Law Judge found that the tenant had failed to prove that the landlords had agreed to permanently waive their right to banked increases in exchange for foregoing the payment of interest on the tenant's security deposit, and that the rent increase was therefore lawful. As to the decreased services claim, the Administrative Law Judge found that there was no reduction in the tenant's storage space in the garage but, rather, the tenant was restricted to an original area due to safety problems he was creating by storing his belongings next to the water heater. Lastly, the tenant failed to prove the existence of a code violation sufficient to uphold his failure to repair claim. On appeal, the tenant states that the decision is in error as to his allegations regarding waiver of rent increases, water and mold damage and storage, and that the Administrative Law Judge allowed hearsay testimony.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

G. 3949-51 – 19<sup>th</sup> St.

AL020233

The landlord's petition for certification of capital improvement costs to the tenants in two units was granted, in part, but the costs of work that had to be re-done several years later was not certified. On appeal, the landlord asserts that: the roof and roof deck were one continuous project, rather than two separate projects; the roof work was not complete until the deck had been replaced; the last invoice for roof work falls within the 5-year Statue of Limitations period; the tenants benefited from the original deck installed in 1996, as well as the larger deck installed in 1999; removal of the deck was incidental to the roof work, as was repair work in the interior of the unit; and the Rent Board has previously certified the costs of correcting defective work, as well as the original work.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

H. 553-555 Arballo Dr.

AT020234 & -35

The landlord's petition for certification of the costs of a new porch roof over two units was granted, resulting in a monthly passthrough in the amount of \$6.52. The tenant at 553 Arballo appeals on the grounds that the complex should be treated as one property, and the work does not meet the definition of "capital improvement" because: it does not materially add to the value of the property; it does not appreciably prolong the property's useful life, as roof replacement is more in the nature of repair; it does not adapt the building to new uses; and there is no evidence that the roof replacements are being amortized or depreciated over their useful lives. The tenant in unit 555 Arballo maintains on appeal that there are errors in the decision, specifically: the finding that the porch roof covers no living space is incorrect, since the porch roof overhangs the bathroom windows of neighboring units; no repair work was done in the unit as a result of water damage from the porch roof; the existing porch was not rebuilt; the porch roof does not benefit this tenant, since she experienced no water damage; and, if the tenants in neighboring units benefited from the reconstruction, they should share in the costs.

MSF: To deny the appeals. (Lightner/Gruber: 2-3; Becker, Marshall, Wasserman dissenting)



MSC: To accept the appeals and remand the case for a hearing to determine whether the porch roof replacement should be allocated to more than the two units in the petition by determining whether the water intrusion would have been of detriment to more than the two units who received the passthrough. If allocation is decided differently, the landlord will be allowed to amend the petition to include more units than originally petitioned for.  
(Wasserman/Marshall: 3-2; Gruber, Lightner dissenting)

I. 20 Fuente Ave.

AT020240

The landlord's petition for certification of the costs of a new porch roof over two units was granted, resulting in a monthly passthrough in the amount of \$20.29 to the tenant in unit 20 Fuente Ave. only. That tenant is represented by the same representative as the tenant in unit 553 Arballo, above, and puts forth the same arguments on appeal.

MSC: To accept the appeals and remand the case for a hearing to determine whether the porch roof replacement should be allocated to more than the two units in the petition by determining whether the water intrusion would have been of detriment to more than the two units who received the passthrough. If allocation is decided differently, the landlord will be allowed to amend the petition to include more units than originally petitioned for.  
(Marshall/Becker: 3-2; Gruber, Lightner dissenting)

J. 454 Arballo Dr.

AT020239

The landlord's petition for certification of the costs of a new porch roof over two units was granted, resulting in a monthly passthrough in the amount of \$17.62 to the tenant in unit 454 Arballo only. That tenant is represented by the same representative as the tenant in unit 553 Arballo, above, and puts forth the same arguments on appeal.

MSC: To accept the appeals and remand the case for a hearing to determine whether the porch roof replacement should be allocated to more than the two units in the petition by determining whether the water intrusion would have been of detriment to more than the two units who received the passthrough. If allocation is decided differently, the landlord will be allowed to amend the petition to include more units than originally petitioned for.  
(Marshall/Becker: 3-2; Gruber, Lightner dissenting)

K. 608 Gonzalez Dr.

AT020236

The landlord's petition for certification of the costs of a new porch roof over two units was granted, resulting in a monthly passthrough in the amount of \$15.11. The tenant in one unit is represented by the same representative as the tenant in unit 553 Arballo, above, and puts forth the same arguments on appeal.

MSC: To accept the appeals and remand the case for a hearing to determine whether the porch roof replacement should be allocated to more than the two units in the petition by determining whether







the water intrusion would have been of detriment to more than the two units who received the passthrough. If allocation is decided differently, the landlord will be allowed to amend the petition to include more units than originally petitioned for.

L. 116 & 118 Grijalva Dr.

AT020237 & -38

The landlord's petition for certification of the costs of a new porch roof over two units was granted, resulting in a monthly passthrough in the amount of \$28.72. The tenants in both units appeal. They are represented by the same representative as the tenant in unit 553 Arballo, above, and put forth the same arguments on appeal.

MSC: To accept the appeals and remand the case for a hearing to determine whether the porch roof replacement should be allocated to more than the two units in the petition by determining whether the water intrusion would have been of detriment to more than the two units who received the passthrough. If allocation is decided differently, the landlord will be allowed to amend the petition to include more units than originally petitioned for.

During their discussion of the above four appeals (20 Fuente Ave., 454 Arballo Dr., 608 Gonzalez Dr. and 116 & 118 Grijalva Dr.), the Commissioners were under the impression that these were porch roof replacements, when they were actually replacement of the roofs covering the entire structures. Since the allocation issues surrounding the porch roofs are different from those involving the replacement of the roofs in their entirety, these appeals will be reconsidered at the Board meeting on November 19<sup>th</sup>.

#### IV. Remarks from the Public (cont.)

B. Laura Traveler, President of PRO, informed the Board that she was happy they remanded the porch roof cases, but that it didn't appear that the Commissioners had read the documents submitted with the appeals. In those submissions, the tenants argued that the roofs did not meet the definition of "capital improvement" in the Ordinance. Ms. Traveler described the situation between Parkmerced management and the tenants as "David vs. Goliath", and said that the landlord just wants money.

C. PRO Board member Genevieve Callejo said that the Administrative Law Judge should have brought up the tenants' objections in his response. Ms. Callejo told the Board that many tenants are too old or ill to have attended the hearings, and that PRO acted as their advocate.

D. Robert Pender inquired about the status of other pending cases concerning Parkmerced.

#### VII. Old Business

##### A. The Blaine Family Trust v. Rent Board (Perlstadt) Rules and Regulations Section 1.21

The Board had voted to pursue an appeal of the court's decision granting the landlord's Writ at their meeting on September 3<sup>rd</sup>. At that time, Deputy City Attorney Randy Riddle informed the Commissioners that it might be beneficial to



the appeal if the Board clarified Rules Section 1.21 to make it clear that tenants can occupy more than one unit in a building as their principal place of residence. President Wasserman asked that staff draft such language, but that it also be made clear that the units had to have been rented to the tenant(s) in good faith and with the landlord's knowledge. Senior Administrative Law Judge Tim Lee drafted such language. Additionally, Deputy City Attorney Scott Dickey proposed additional language to make it clear that tenants must really live in the units, and that a tenant could meet the indicia of residency outlined in the regulation, but still not reside in the unit as their principal place of residence. Commissioner Gruber objected to the proposed amendments because he believes that the language does not constitute a clarification but, rather, is a change from the singular to the plural. The Commissioners discussed an introductory paragraph stating that the amendment shall apply to all pending decisions, and requested that staff consult the City Attorney about whether that paragraph needs to be or should be included. With a minor change to the proposed language, the Board voted as follows:

MSC: To put proposed amendments to Rules and Regulations Section 1.21 out for Public Hearing. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

The Public Hearing will be held on December 3<sup>rd</sup>, 2002. The proposed language reads as follows below (deletions indicated with strikeouts; new language underlined):

This amendment clarifies that the Board intends and has understood the phrase "in a rental unit" not to preclude a tenant's use of more than one unit in a building as a principal place of residence where the tenant resides in the units with the knowledge and consent of the landlord. This clarifying amendment shall apply to all decisions issued after the effective date of the amendment and to all pending decisions for which no final court decision has been issued as of the effective date.

### **Section 1.21 Tenant In Occupancy** (Effective June 5, 2001)

A tenant in occupancy is an individual who otherwise meets the definition of tenant as set forth in Ordinance Section 37.2(t), and who, with the knowledge and consent of the landlord, actually resides in a rental unit or rental units in the same building as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit or units at all times or continuously, but it the unit or units must be his or her the tenant's usual place of return. When considering whether a tenant occupies one or more rental units in the same building as his or her "principal place of residence," the Rent Board must consider the totality of the circumstances, including, but not limited to the following elements: Evidence that a unit is the individual's "principal place of residence," includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding:

(1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) utilities are billed to and paid by the individual at the subject premises;



(3) all of the individual's personal possessions have been moved into the subject premises;

(4) a homeowner's tax exemption for the individual has not been filed for a different property;

(5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence; and/or

(6) Testimony from knowledgeable persons or other credible evidence whether the tenant actually occupies the rental unit or units as his or her principal place of residence.

A compilation of these elements lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding.

#### B. Proposed Amendments to Rules and Regulations Section 1.18

In order for Commissioner Lightner to familiarize herself with the proposed amendments to Rules Section 1.18, discussion of this issue was continued to the meeting on November 19<sup>th</sup>.

#### C. Rules and Regulations Section 6.10(a)

In March of 2002, the Board amended Rules and Regulations Section 6.10(e) to provide that only the owner who incurred increased debt service and/or property tax costs could file a petition to pass through such costs to tenants. At the meeting on October 15<sup>th</sup>, the Deputy Director informed the Board that there is a pending situation where other costs incurred by a prior owner, specifically water and repairs, are being petitioned for. Ms. Wolf asked the Board if they wished to further amend the regulation to make it clear that all expenses must have been incurred by the owner who is filing the petition. The Commissioners requested that the City Attorney be consulted regarding the effect of amending a regulation on pending cases, filed before the effective date of the amendment. The Deputy Director reported that the City Attorney advised that there would be no problem applying a new regulation to pending cases unless a party could prove that the Board acted with malice toward a particular individual, and would not have adopted the regulation if the problem had been raised in any other case; or if the party had a vested right to application of the existing regulation, i.e., by having acted in reliance on the existing reg. The Board may wish to amend Rules Section 6.10(a) to require that expenses be incurred by the owner who files the petition at some time in the future.

#### IX. Calendar Items

November 5, 2002 - NO MEETING (Election Day)

November 12, 2002

6:30 3 appeal considerations  
Parkmerced (182 tenant appeals)



November 19, 2002

- 6:30** 18 appeals (including 10 Parkmerced roof appeals; 4 rescheduled from 10/29/02)  
Old Business: Proposed Amendments to Rules Section 1.18

November 26, 2002 – NO MEETING

X. Adjournment

President Wasserman adjourned the meeting at 8:40 p.m.







NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:30 p.m.,

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

November 12, 2002  
25 Van Ness Avenue, #70, Lower Level

AGENDA

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**Note:** Due to the unavailability of a larger meeting room, space will be cramped. Tenants are encouraged to send a representative(s) to the meeting, and can call the Rent Board office the next afternoon to find out the disposition of the appeals.

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 520 So. Van Ness #319 AT020241

The tenant appeals the dismissal of his petition alleging decreased housing services due to his untimely arrival at the hearing.

B. 909 Page St. #6 AT020243

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 3141 Irving St. AT020242

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to attend the hearing.

D. Parkmerced AT020260 thru AT020451

182 tenants appeal the decision granting rent increases based on increased operating expenses.

VI. Communications





VIII. Old Business

IX. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

X. New Business

XI. Calendar Items

XII. Adjournment



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WILLIE L. BROWN, JR.  
MAYOR

**MINUTES OF THE REGULAR MEETING OF  
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STABILIZATION & ARBITRATION BOARD,**

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, November 12, 2002 at 6:30 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSE  
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:39 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Lightner; Marshall; Mosser;  
Wasserman.  
Commissioners not Present: Justman.  
Staff Present: Gartzman; Grubb; Wolf.

Commissioners Aung and Murphy appeared on the record at 6:42 p.m.;  
Commissioner Mosser went off the record at 8:30 p.m.

President Wasserman announced that Commissioner Hobson has tendered his resignation, effective upon the pleasure of the Mayor. President Wasserman thanked Commissioner Hobson for his service to the Board.

III. Approval of the Minutes

MSC: To approve the Minutes of October 29, 2002.  
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Robert Pender, Vice-President of the Parkmerced Residents' Organization (PRO), told the Board that PRO has been defending the tenants of Parkmerced against rent increases for the past 2-1/2 years. Mr. Pender believes that Parkmerced residents have also been subjected to biased action by Rent Board employees, such as being informed on the Agenda that they could call the Rent Board office to find out the disposition of their appeals.

B. Tenant Helen Hope of Parkmerced expressed concern that her individual appeal had not been responded to in the Administrative Law Judge's appeal response memorandum.

C. Carolyn Cahn, PRO Board member, told the Commissioners that the initial petition filed by Parkmerced was withdrawn, but the amount increased in the subsequent petition. Ms. Cahn believes that the intent of Rules Section 6.10 was to benefit the owners of small buildings, and not the owners of large rental complexes.





D. Tenant Dorothy Carr of Parkmerced said that Leona Helmsley is a "Cinderella Queen" compared to the current owners of Parkmerced. Ms. Carr heard a rumor that Parkmerced paid Willie Brown money to have the decision turn out the way it did.

E. Tenant Garfield Powell of Parkmerced said that the petition was fatally flawed and that if the tenants and Administrative Law Judge hadn't pointed out discrepancies, the landlord would never have come up with sufficient documentation to prevail. Mr. Powell maintained that Parkmerced is a property, and not a building, and said that the landlord has unclean hands.

F. Tenant Louise Shields of Parkmerced informed the Board about an on-going termite infestation issue in her unit which has recurred. Ms. Shields said that Parkmerced management has been unresponsive, and that many tenants are moving out.

G. Lawrence Scanciarelli, the attorney representing PRO, told the Board that the language in Section 6.10 refers to a "building"; there is no authority for not breaking out the costs by building; and there is also no authority for the formula in the decision used for allocating costs between the residential and commercial units.

H. Laura Traveler, President of PRO, said that it was a "draconian" decision by the Administrative Law Judge to allow 7% rent increases, and that the decision supported the landlord 100%. Ms. Traveler asked the Commissioners to remand the nine issues raised in the tenants' joint appeal, and asked the Board to "stand by us."

I. Tenant Genevieve Callejo of Parkmerced told the Board that debt service costs were excluded for certain blocks that Parkmerced sold to San Francisco State, and that it wasn't fair to have to pay depending on which block one lived on. Ms. Callejo objected to the Administrative Law Judge having granted Parkmerced's request to amend the petition, without the tenants having an opportunity to object.

J. Tenant Robley Passalacqua said that he is a "Johnny-Come-Lately" to this process, not having received notice of the hearings on this petition. Mr. Passalacqua filed his appeal untimely because the Rent Board does not "honor" the postmark date, and said that he has been denied due process.

K. The tenant appellant in the case at 909 Page #6 (AT020243) said that he filed a hardship appeal because he is in the United States on a visa, which only allows him to work for one employer. That employer currently does not have enough work for him, and he cannot afford to pay the retroactive capital improvement amounts. He thanked the Board for their consideration.

#### V. Consideration of Appeals

A. 520 So. Van Ness #319

AT020241

The tenant's petition alleging decreased housing services was dismissed due to the tenant's having arrived approximately an hour and a half late to the hearing. On appeal, the tenant alleges that he was late because he had worked from 10:00 p.m. the previous night until 10:00 a.m. the morning of the hearing.



MSC: To accept the appeal and remand the case for a new hearing. Should the tenant fail to appear in a timely fashion to the next hearing, absent extraordinary circumstances, no further hearings will be granted. (Becker/Marshall: 5-0)

B. 909 Page St. #6

AT020243

The landlord's petition for certification of capital improvement costs was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

C. 3141 Irving St.

AT020242

The tenant's appeal was filed 15 days late because the tenant's files regarding the case were temporarily mis-placed when the tenant moved out of the subject unit.

MSC: To find good cause for the late filing of the appeal. (Becker/Marshall: 5-0)

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the hearing. On appeal, the tenant maintains that he was unaware of the date and time of the hearing because the Notice of Hearing was sent to the subject unit before it was forwarded to his current address.

MSC: To remand the case to the Administrative Law Judge to change the Dismissal to "without prejudice" so that the tenant can pursue any rights and remedies he may have in Small Claims Court. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

D. Parkmerced

AT020260 thru AT020451

The landlord's petition for rent increases for 2,702 of 3,456 units based on increased operating expenses was granted, resulting in 7% base rent increases for the majority of the tenants. 191 tenants appealed the decision. Of these, 143 tenants represented by the same attorney filed a joint appeal; and 51 tenants filed individual appeals, 27 on the grounds of financial hardship. Subsequent to the filing of the appeals, 9 tenant appellants settled their hardship claims with Parkmerced and withdrew their appeals; 6 of these individuals had also filed joint appeals, which were withdrawn.

The arguments put forward by the tenants in the joint appeal are as follows: the Administrative Law Judge erred by allowing the petitions to be filed for 42 separate blocks, each block consisting of 1 or more buildings, instead of requiring a separate petition for each building; the 14 executive suites are not occupied by "Tenants in Occupancy," and they therefore should not have been included; the petitions should have been administratively dismissed, as there is no authority for treating a complex as a "building"; rents for comparable units should have been taken into consideration; the comparison periods chosen created "exaggerated results"; there is no authority for allowing an allocation between residential and commercial units based on income; no fair comparison of the debt service between Year 1 and Year 2 could be made, because certain parcels were left unencumbered so that they could be sold; the Year 2 debt service should have been adjusted by the proceeds of the sales price



and market value of the unencumbered parcels; and the Board should waive its regulations in order to determine whether the landlord has received a fair return on its investment absent the petitioned-for rent increases.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to re-open the record in order for the landlord and tenants to provide square footage information in order to allocate the expenses between the residential and commercial units on a square footage basis. The appeal is denied as to all other issues (Wasserman/Marshall: 5-0)

The individual appeals are as follows below:

The tenants in unit 55 Chumasero Dr. #6J filed their individual appeal 1 day late.

MSC: To find good cause for the late filing of the appeal.  
(Marshall/Becker: 5-0)

The tenants in unit 55 Chumasero Dr. #6J provided no substantive basis for their appeal.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

The individual appeal of the tenant at 329 Font was filed 1 day late.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Wasserman: 5-0)

The tenant at 329 Font appeals the decision on due process grounds, alleging non-receipt of the notices of hearing. The tenant failed to provide the requested Declaration of Non-Receipt of Notice of Hearing.

MSC: To deny the individual appeal of the tenant at 329 Font Blvd.  
(Lightner/Gruber: 5-0)

The hardship appeal of the tenant at 750 Gonzalez #3G was filed 25 days late because the tenant does not read or write English very well, and was unaware of the deadline for filing the appeal.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Marshall: 5-0)

The tenant at unit 750 Gonzalez #3G appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

The tenant at 750 Gonzalez #9C filed her appeal 23 days late because she did not understand the paperwork that she received.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Marshall: 5-0)



The tenant at 750 Gonzalez #9C appeals the decision the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Becker: 5-0)

The tenant at 310 Arballo #9M appeals the decision on the grounds that the landlord shouldn't be able to take a tax deduction for maintenance costs and at the same time increase the tenants' rents.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

The tenant at 350 Arballo #12E reiterates the arguments put forward in the joint appeal

MSC: The tenant is a party to the Joint Appeal and her individual appeal is therefore denied. (Lightner/Gruber: 5-0)

The tenant at 534 Arballo argues that: Rules Section 6.10 applies to an individual building, and not a property; the landlord's witnesses were unreliable; the landlord's petition was flawed, and the documentation provided failed to meet the landlord's burden of proof; and the tenants have suffered a reduction in services, which should have been taken into account.

MSC: To deny the individual appeal of the tenant at 534 Arballo Drive. (Lightner/Gruber: 5-0)

The tenant in unit 570 Arballo maintains that: the decision does not implement a fair and equitable solution, because the landlord could refinance the property and obtain a financial recovery that would obviate the need for rent increases.

MSC: To deny the individual appeal of the tenants at 570 Arballo Drive. (Lightner/Gruber: 4-1; Becker dissenting)

The tenant at 22 Cambon Dr. appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Becker: 5-0)

The tenant at 125 Cambon Drive, Apt. 10K is an elderly veteran who had a stroke several years ago, which has left him with severe limitations. His appeal was continued in order for staff to continue working with Parkmerced management towards resolution of his appeal.

The tenant at 106 Cardenas Ave. appeals on the grounds that a landlord should not be able to obtain a rent increase due to maintenance costs when those costs are tax deductible.

MSC: To deny the individual appeal of the tenant at 106 Cardenas Ave. (Lightner/Gruber: 5-0)

The tenant at 228 Cardenas appeals on the grounds that the landlord did not file separate petitions, detailing expenses on a per-building basis.







MSC: To deny the individual appeal of the tenant at 228 Cardenas Ave.  
(Lightner/Gruber: 3-2; Becker, Marshall dissenting)

The tenant at 21 Castelo maintains on appeal that the size of these rent increases threatens the availability of reasonably priced rentals for middle class residents of San Francisco; and expresses her concern that rents will continue to increase, as continuous "improvements" are made.

MSC: To deny the individual appeal of the tenant at 21 Castelo Ave.  
(Lightner/Gruber: 4-1; Marshall dissenting)

The tenant at 55 Chumasero #5H reiterates the arguments contained in the joint appeal, adding that Rules Section 6.10 was intended to address a single building, and not a large complex consisting of multiple buildings; and maintaining that the landlord has not proved that prior owner Leona Helmsley no longer has an ownership interest in the property.

MSC: The tenant is a party to the Joint Appeal and her individual appeal is therefore denied. (Lightner/Gruber: 5-0)

The tenant at 55 Chumasero Dr. #8M avers that rent increases should be limited to the annual allowable amount, and no additional passthrough should be granted.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

The tenant at 55 Chumasero #M-E maintains that the 7% increase is too much, since she is a teacher making low wages; and she should not be responsible for paying for the landlord's operating and maintenance costs.

MSC: To deny the individual appeal of the tenant at 55 Chumasero Dr.  
#M-E. (Lightner/Gruber: 4-1; Becker dissenting)

The tenant at 100 Font, Apt. 1-K appeals the decision on the grounds of financial hardship. Additionally, the tenant alleges that improvements are being made to the property to attract potential new tenants, but not to improve conditions for existing tenants.

MSC: To deny the individual appeal of the tenant at 100 Font Blvd. #1K  
on substantive grounds and the claim of financial hardship.  
(Lightner/Gruber: 4-1; Becker dissenting)

The tenants at 150 Font #10-D and 2-L assert that a landlord should not be able to take tax deductions for operating and maintenance costs, and increase tenants' rents on these same grounds.

MSC: To deny the individual appeals of the tenants at 150 Font Blvd.  
#10-D and 2-L. (Lightner/Gruber: 5-0)

The tenants at 128 Garces Dr. maintain that the Administrative Law Judge erred by treating the property as a single building, rather than a complex of buildings; and allege that the landlord did not produce any evidence of an increase in the aggregate costs of operating and maintaining the tenants' building.



MSC: To deny the individual appeal of the tenants at 128 Garces Dr. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

The tenant at 240 Garces Dr. appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Lightner/Becker: 5-0)

The tenant at 605 Gonzalez Dr. appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Lightner/Becker: 5-0)

The tenant at 750 Gonzalez #11D asserts that amounts he has paid towards a utility passthrough should be included in the calculation of the allowable operating and maintenance expense increase.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

The tenant at 810 Gonzalez #4D asserts that the increase is "illegal and incorrect."

MSC: To deny the appeal. (Gruber/Lightner: 4-1; Becker dissenting)

The tenant at 1 Josepha appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Lightner/Becker: 5-0)

The tenant at 5 Josepha reiterates the arguments advanced in the joint appeal, and also appeals on the grounds of financial hardship.

MSC: To accept the tenant's individual appeal and remand the case for a hearing only as to the financial hardship claim.

The tenants at 355 Serrano, Apt. 12C assert that the decision is "unfair and one-sided"; that the landlord has adopted no mitigation measures to reduce the debt service costs; and that the requirements of Rules Section 6.10(g) have not been taken into account.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

The tenant at 355 Serrano, 1F appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Gruber/Lightner: 5-0)

The tenant at 355 Serrano #7-G reiterates the arguments raised in the joint appeal.

MSC: The tenant is a party to the Joint Appeal and his individual appeal is therefore denied. (Gruber/Marshall: 5-0)



The tenant at 405 Serrano #11B asserts that the decision is "illegal and incorrect."

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

The tenant at 405 Serrano #5D appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Wasserman/Gruber: 4-0)

The tenant at 405 Serrano #10K makes the same arguments as contained in the joint appeal.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to re-open the record in order for the landlord and tenants to provide square footage information in order to allocate the expenses between the residential and commercial units on a square footage basis. The appeal is denied as to all other issues. (Wasserman/Lightner: 4-0)

The tenant at 405 Serrano, Apt. 12-L appeals the decision on the grounds of financial hardship. As the tenant's application was incomplete, and the tenant did not furnish the requested information, it was the consensus of the Board to continue this appeal in order for staff to contact the tenant again.

The tenant at 102 Tapia Drive appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Gruber/Marshall: 3-1; Lightner dissenting)

The tenants at 105 Tapia Drive appeal the decision on the grounds of financial hardship.

MSC: To deny the appeal. (Lightner/Gruber: 4-0)

The tenants at 525 Vidal Drive appeal the decision on the grounds of financial hardship.

MSC: To deny the appeal. (Lightner/Gruber: 4-0)

The tenant at 114 Juan Bautista Circle supplements her participation in the Joint Appeal with an appeal on the grounds of financial hardship.

MSC: To accept the tenant's individual appeal and remand the case for a hearing on the claim of financial hardship. (Wasserman/Gruber: 4-0)

#### VI. Calendar Items

November 19, 2002

6:30 18 appeal considerations (4 rescheduled from 10/29/02)



Old Business: Proposed Amendments to Rules Section 1.18

November 26, 2002- NO MEETING

VII. Adjournment

President Wasserman adjourned the meeting at 10:10 p.m.





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THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

Tuesday, 6:30 p.m.,

November 19, 2002

25 Van Ness Avenue, #70, Lower Level

POLLY MARSHALL  
VICE-PRESIDENT

AGENDA

DOCUMENTS DEPT.

NOV 21 2002

SAN FRANCISCO  
PUBLIC LIBRARY

- I. Call to Order  
KHIN MAI AUNG  
II. Roll Call  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
III. Approval of the Minutes  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
IV. Remarks from the Public  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 747 Ellis St. #7 & #9 AT020249 & -50

Two tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

B. 20 Fuente Ave. AT020240  
(rescheduled from 10/29/02)

The tenant appeals the decision certifying the costs of a new roof.

C. 454 Arballo Dr. AT020239  
(rescheduled from 10/29/02)

The tenant appeals the decision certifying the costs of a new roof.

D. 608 Gonzalez Dr. AT020236  
(rescheduled from 10/29/02)

The tenant appeals the decision certifying the costs of a new roof.

E. 116 & 118 Grijalva Dr. AT020237  
(rescheduled from 10/29/02)

Two tenants appeal the decision certifying the costs of a new roof.

F. 26 & 30 Garces Dr. AT020258 & -59





Two tenants appeal the decision certifying the costs of a new roof.

G. 101 Bucureli Dr. AT020257

The tenant appeals the decision certifying the costs of a new roof.

H. 120 & 122 Cambon Dr. AT020255 & -56

Two tenants appeal the decision certifying the costs of a new porch roof.

I. 21 Fuente Ave. AT020254

The tenant appeals the decision certifying the costs of a new roof.

J. 26 & 30 Garces Dr. AT020258 & ?

Two tenants appeal the decision certifying the costs of a new porch roof.

K. 328 Garces Dr. AT020253

The tenant appeals the decision certifying the costs of a new roof.

L. 1670 Clay St. AT020245

The tenant appeals the remand decision determining that she is not a "Tenant in Occupancy" pursuant to Rules Section 1.21.

M. 3649 Market St. #201 AL020246

The landlord appeals the decision granting a rent reduction due to the landlord's refusal to allow two replacement roommates.

N. 1177 California St. #1415 AL020247

The landlord appeals the decision granting claims of decreased housing services.

O. 102 Clifford Terrace AT020248

The tenant appeals the decision establishing a base rent for the unit.

P. 4831 California St. AL020251

The landlord appeals the decision granting a claim of unlawful rent increase.

Q. 2416 Geary Blvd. #4 AT020252

The tenants appeal the decision certifying capital improvement costs.

R. 1601 Lombard St. AL020218  
(cont. from 10/29/02)



The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

- IX. New Business
- X. Calendar Items
- XI. Adjournment





## **ACCESSIBLE MEETING POLICY**

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MINUTES OF THE REGULAR MEETING OF  
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Tuesday, November 19, 2002 at 6:30 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

DEC 13 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

President Wasserman called the meeting to order at 6:32 p.m.

II. Roll Call

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Commissioners Present:

Aung; Becker; Gruber; Hobson; Justman;  
Lightner; Murphy; Wasserman.

Commissioners not Present:

Marshall; Mosser.

Staff Present:

Gartzman; Grubb; Wolf.

III. Approval of the Minutes

President Wasserman announced that the Minutes of November 12, 2002 were not yet available for approval.

IV. Remarks from the Public

A. Robert Pender of the Parkmerced Residents' Organization (PRO) told the Board that they were not following the Agenda, which provides for approval of the Minutes, because the Minutes of the meeting of November 12<sup>th</sup> were not yet ready for approval. Mr. Pender requested a copy as soon as possible and wanted his objection noted for the record.

B. Elton Blum, the landlord's attorney in the case concerning 1177 California St. #1414 (AL020247), reminded the Commissioners that the tenants have filed no opposition to the appeal.

C. Craig Clevenger asked if President Wasserman was related to Attorney David Wasserman, and was informed that she is not.

D. Paul Clifford, attorney for the tenant at 1670 Clay St. (AT020245), told the Board that the tenant has resided in the unit for twenty-three years, but that the decision was based on a short period of time when she was residing in Florida. Mr. Clifford said that the Rent Ordinance was enacted in order to protect such tenants.

E. Tenant Jonathan Marcus of 4831 California St. (AL020251) told the Board that his landlord would "say anything to confuse the issue," and asked that the Board go through Mr. Marcus' response to the landlord's appeal carefully.

F. Tenant Robley Passalacqua, representative for many of the tenants who filed appeals of the decisions certifying the costs of new roofs at Parkmerced, told



the Board that the Ordinance dictates that "properties" be considered when considering capital improvement petitions, whereas the word "building" is used for operating and maintenance expenses. Mr. Passalacqua said that the words "mean what they say," and are not interchangeable. He believes that the new roofs at Parkmerced meet none of the criteria necessary to be considered capital improvements.

V. Consideration of Appeals

A. 747 Ellis St. #7 & #9

AT020249 & -50

The tenant in unit #9's appeal was filed one day late because the tenant thought he had fifteen days from the date of the postmark for the filing of the appeal.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Lightner: 5-0)

The landlord's petition for certification of capital improvement costs to 8 out of 14 units was granted. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit #7 and schedule a hearing on the tenant's claim of financial hardship.  
(Becker/Aung: 5-0)

MSC: To accept the appeal of the tenant in unit #9 and schedule a hearing on the tenant's claim of financial hardship.  
(Becker/Aung: 5-0)

B. 20 Fuente Ave.

AT020240

(rescheduled from 10/29/02)

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$20.29 to the tenant in unit 20 Fuente Ave. only. That tenant appeals on the grounds that the complex should be treated as one property, and the work does not meet the definition of "capital improvement" because: it does not materially add to the value of the property; it does not appreciably prolong the property's useful life, as roof replacement is more in the nature of repair; it does not adapt the building to new uses; and there is no evidence that the roof replacements are being amortized or depreciated over their useful lives.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

C. 454 Arballo Dr.

AT020239

(rescheduled from 10/29/02)

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$17.62 to the tenant in unit 454 Arballo only. That tenant is represented by the same representative as the tenant in unit 20 Fuente Ave., above, and puts forth the same arguments on appeal.



MSC: To deny the appeal. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

D. 608 Gonzalez Dr.

AT020236  
(rescheduled from 10/29/02)

The landlord's petition for certification of the costs of a new roof over four units was granted, resulting in a monthly passthrough in the amount of \$15.11. The tenant in one unit is represented by the same representative as the tenant in unit 20 Fuente Ave., above, and puts forth the same arguments on appeal.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

E. 116 & 118 Grijalva Dr.

AT020237 & -38  
(rescheduled from 10/29/02)

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$28.72. The tenants in both units appeal. They are represented by the same representative as the tenant in unit 20 Fuente Ave., above, and put forth the same arguments on appeal.

MSC: To deny the appeals. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

F. 26 & 30 Garces Dr.

AT020258 & -59

The landlord's petition for certification of the costs of a new roof over four units was granted, resulting in a monthly passthrough in the amount of \$15.36. The tenants in two units appeal. They are represented by the same representative as the tenant in unit 20 Fuente Ave., above, and put forth the same arguments on appeal.

MSC: To deny the appeals. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

G. 101 Bucareli Dr.

AT020257

The landlord's petition for certification of the costs of a new roof over one unit was granted, resulting in a monthly passthrough in the amount of \$39.47. The tenant is represented by the same representative as the tenant in unit 20 Fuente Ave., above, and puts forth the same arguments on appeal.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

H. 120 & 122 Cambon Dr.

AT020222 & -56

The landlord's petition for certification of the costs of a new porch roof over two units was granted, resulting in a monthly passthrough in the amount of \$6.47. The tenants in both units appeal. They are represented by the same representative as the tenant in unit 20 Fuente Ave., above, and put forth the same arguments on appeal.

MSC: To deny the appeals. (Gruber/Lightner: 3-2; Aung, Becker dissenting)





I. 21 Fuente Ave.

AT020254

The landlord's petition for certification of the costs of a new roof over five units was granted, resulting in a monthly passthrough in the amount of \$17.84. The tenant in one unit is represented by the same representative as the tenant in unit 20 Fuente Ave., above, and puts forth the same arguments on appeal.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Aung, Becker dissenting)

J. 328 Garces Dr.

AT020253

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$21.85. The tenant in one unit is represented by the same representative as the tenant in unit 20 Fuente Ave., above, and puts forth the same arguments on appeal. The tenant additionally points out that the Administrative Law Judge inadvertently omitted the paragraph certifying the cost of the new roof from the decision.

After discussion, it was the consensus of the Board to continue this case in order for staff to contact the tenant and find out if she wishes to augment her substantive appeal with a hardship claim.

K. 1670 Clay St.

AT020245

The landlord filed a petition seeking a determination as to whether the unit constituted the tenant's principal place of residence. The Administrative Law Judge found that the tenant was not a "tenant in occupancy" pursuant to Rules and Regulations Section 1.21 because she had resided in a unit in Florida which she owned with her mother for over one year, and that was the place to which she returned after traveling or job-related training. The tenant's appeal was accepted and the case was remanded to the Administrative Law Judge to examine whether the unit constituted the tenant's principal place of residence between the date of enactment of Rules and Regulations Section 1.21 and the date of filing of the petition, with instructions that behavior before the date of enactment of the regulation and up until the date of the hearing could be considered. In the Decision on Remand, the Administrative Law Judge upheld the original decision, finding that the tenant was not a "Tenant in Occupancy" at the time the petition was filed, although the tenant had returned to the San Francisco unit in response to the filing of the petition. On further appeal, the tenant maintains that: she meets all of the indices of residency contained in Rules Section 1.21; no evidence was presented that the Florida address, or any other address, constitutes her principal place of residence; she was effectuating repairs on the Florida unit in order to ready it for rental; the tenant has never sublet the unit; the evidence indicates that the tenant had intended to return to the San Francisco unit prior to the filing of the landlord's petition; the tenant had no need to document in detail her comings and goings prior to the enactment of Rules Section 1.21; and Rules Section 1.21 exceeds the Rent Board's authority and violates the Interstate Commerce Clause of the Constitution by interfering with the right to travel.

MSC: To accept the appeal for Board hearing on the issue of the tenant's intent to return to the unit. The parties will have ten minutes for direct examination; ten minutes for cross-examination; and five minutes for closing arguments. (Becker/Aung: 5-0)



L. 3649 Market St. #201

AL020246

The tenant's petition alleging decreased housing services due to the landlord's failure to allow two replacement roommates was granted and the landlord was found liable to the tenant in the amount of \$3,038.03. On appeal, the landlord asserts that: the tenant has not suffered a reduction in housing services because he has always been entitled to replace one roommate, and the open behavior of the parties has not established that the tenancy includes more than two people; the tenant failed to prove that the prior property manager approved any occupant other than the two signatories on the lease agreement; and certain findings in the decision are based on hearsay evidence.

After discussion, it was the consensus of the Board to continue this case in order to receive a Memorandum from the Administrative Law Judge addressing the question of whether consent was actually withheld for one replacement roommate.

M. 1177 California St. #1415

AL020247

The tenants' petition alleging decreased housing services in this condominium unit was granted, and the landlord was found liable to the tenants in the amount of \$4,399.00. The landlord failed to appear at the properly noticed hearing. On appeal, the landlord attests to not having received the Notice of Hearing under penalty of perjury.

MSC: To recuse Commissioner Becker from consideration of this appeal.  
(Aung/Becker: 5-0)

MSC: To accept the appeal and remand the case for a new hearing.  
(Lightner/Gruber: 4-0)

N. 102 Clifford Terrace

AT020248

The tenant's appeal was filed three days late because she picks up her mail on a weekly basis at a post office box, and a Rent Board staff member allegedly misinformed her regarding the filing deadline.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Aung: 5-0)

The landlord petitioned to establish a base rent for the unit, which was being occupied rent-free by his sister, the tenant. The petition was granted, and the Administrative Law Judge set the rent at \$1,092.00 per month. The tenant appeals, arguing that no rent should be charged for the unit because: it is infested with mold, mildew, dry rot, rodents, and experiences flooding and seepage every winter, which has damaged the tenant's personal possessions and destroyed the carpeting; it is located next to an underground transformer which may be emitting dangerous EMF's; the iron gate that provides egress is dangerous; there are leaks into the garage; there was an oral agreement that the tenant be allowed to live in the unit as long as she wanted rent-free, the tenant was not prepared for the hearing, because she thought her attorney would be requesting a postponement; and she has been subjected to threats and harassment from her brother, the landlord.



MSC: To deny the appeal without prejudice to the tenant's filing a petition alleging decreased housing services, if warranted.  
(Lightner/Gruber: 5-0)

O. 4831 California St.

AL020251

The tenant's petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenant in the amount of \$7,285.98. On appeal, the landlord argues that: the originally agreed-upon rent for three occupants was \$1800.00 and not \$1,650.00; the amount of the overcharge was incorrectly calculated; and the amounts owing to the tenant's prior roommates will never be collected by them, which results in a windfall to the tenant.

After discussion, it was the consensus of the Board that recoupment of the entire amount by the Master Tenant would be unfair, as there were subtenants on the premises who paid a portion of the unlawful amounts. Therefore, this case was continued in order for the landlord and Master Tenant to undertake a search and attempt to locate any subtenants who were residing on the premises at the time the overcharges were paid. Staff will send a memo to the parties and explain that they should submit the names and addresses of the prior subtenants to the Board for continued consideration of this appeal at a future meeting.

P. 2416 Geary Blvd. #4

AT020252

The landlord's petition for certification of capital improvement costs to the tenants in one of five units was granted. The tenants appeal the decision on the grounds that the building façade and hallway improvements were cosmetic enhancements of a luxury nature that were done in order to receive higher rents from four newly renovated apartments in the building; and the deferred maintenance defense should apply to new as well as previous owners of the building

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

Q. 1601 Lombard St.

AL020218

(cont. from 10/29/02)

The landlord's petition seeking a determination as to whether there are any "Tenants in Occupancy" at the subject unit was denied, because the Administrative Law Judge found that two of the current occupants reside at the unit as their principal place of residence. On appeal, the landlord argues that: the tenant took actions after the petition was filed to establish occupancy in the unit but, at the time the petition was filed, she was not a "Tenant in Occupancy"; the tenant does not qualify for protection under the Ordinance because she has been residing out of state for three years; by having sublet the unit, the tenant became a landlord, and had no right to occupy the unit; the decision is beyond the authority of the Rent Board, because it expands the definition of "Tenant in Occupancy"; and the tenant in this case has unclean hands, which should have factored in to the decision. After discussion at the meeting on October 15<sup>th</sup>, it was the consensus of the Board to continue this case in order for staff to contact the tenant and find out whether she has moved back in to the subject unit. The tenant furnished evidence of her reoccupancy of the unit. The case was further continued from the meeting on October 29<sup>th</sup> due to the absence of Commissioner Justman, who had begun the consideration of this case on October 15<sup>th</sup>.



MSC: To deny the appeal. (Becker/Aung: 3-2; Gruber, Lightner dissenting)

VI. Communications

The Board received correspondence concerning cases on the calendar.

IV. Remarks from the Public (cont.)

G. Tenant Jonathan Marcus of 4831 California told the Commissioners that all of the rent checks provided to the landlord came from him; that it would be difficult to split up the amount between all the prior roommates; that the landlord won't have any incentive to find the old roommates; and he believes the money is legally his.

VII. Calendar Items

November 26, 2002 - NO MEETING

December 3, 2002

6:30 Executive Session: Blaine Family Trust v. Rent Board (Perlstadt)  
Public Hearing: Proposed Amendments to Rules Section 1.21  
11 appeal considerations  
Old Business: Proposed Amendments to Rules Section 1.18

VIII. Adjournment

President Wasserman adjourned the meeting at 8:50 p.m.







NOTICE OF THE REGULAR MEETING OF  
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MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
December 3, 2002

25 Van Ness Avenue, #70, Lower Level

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DEC - 3 2002

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3/02  
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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Vote on Whether to Go Into Closed Session Regarding the Case of The Blaine Family Trust vs. Rent Board (Perlstadt) (Superior Court Case No. 500854) (Pursuant to S.F. Administrative Code Section 67.11{a})
- VI. Closed Session re Perlstadt, supra (Pursuant to Government Code Section 54956.9{a})
- VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Perlstadt, supra (Pursuant to S.F. Administrative Code Section 67.11{a})
- VIII. Report on Any Actions Taken in Closed Session Regarding Perlstadt, supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2})
- IX. Consideration of Appeals

A. 327 & 329 Font Blvd. AT020500 & -01

Two tenants appeal the decision certifying the costs of a new roof.

B. 56 Cambon Dr. AT020502

One tenant appeals the decision certifying the costs of a new roof.

C. 1 Fuente Ave. AT020504

One tenant appeals the decision certifying the costs of a new roof.





D. 16 Vidal Dr. AT020503

One tenant appeals the decision certifying the costs of a new roof.

E. 101 Gonzalez Dr. AT020505

One tenant appeals the decision certifying the costs of a new roof.

F. 1740 Beach St. #14 AT020497

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

G. 150 – 28<sup>th</sup> St. #4 AT020491

The tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

H. 4120 Folsom St. AT020498

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

I. 6939 A California St. AT020494

The tenant appeals the decision denying claims of decreased housing services.

J. 1550 Bay St. AL020490

The landlord appeals the decision granting rent reductions to forty-one tenants due to decreased housing services.

K. 55 Dolores St. AL020496

The landlord appeals the decision partially granting certification of capital improvement costs.

X. Public Hearing

6:30 Proposed Amendments to Rules and Regulations Section 1.21  
The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)

XI. Communications

XII. Director's Report

XIII. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

IV. Remarks from the Public (cont.)



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- XV. Calendar Items
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VICE-PRESIDENT

Tuesday, December 3, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

DEC 13 2002

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:07 p.m.

II. Roll Call

Commissioners Present:	Becker; Gruber; Lightner; Marshall; Wasserman.
Commissioners not Present:	Hobson; Justman; Murphy.
Staff Present:	Grubb; Wolf.

Commissioner Mosser appeared on the record at 6:34 p.m.; Commissioner Aung arrived at the meeting at 6:50 p.m.; and President Wasserman left the meeting at 8:14 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 12, 2002.  
(Marshall/Becker: 5-0)

IV. Remarks from the Public

A. Robert Pender of the Parkmerced Residents' Organization (PRO) told the Board that Parkmerced management is attempting to transfer funds from long-term tenants to the new landlords by circumventing the Rent Ordinance. PRO will now be seeking assistance from the Board of Supervisors, Office of the City Attorney and Office of the District Attorney.

V. Vote on Whether to Go Into Closed Session Regarding the Case of The Blaine Family Trust vs. Rent Board (Perlstadt) (Superior Court Case No. 500854) Pursuant to S.F. Administrative Code Section 67.11(a)

MSC: To go into Closed Session. (Marshall/Lightner: 5-0)

VI. Closed Session re Perlstadt, supra, Pursuant to Government Code Section 54956.9(a)

The Board went into Closed Session from 6:14 to 7:05 p.m. with Deputy City Attorney Scott Dickey to discuss the case of The Blaine Family Trust vs. Rent Board (Perlstadt) (Superior Court Case No. 500854).





VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Perlstadt, supra.

MSC: Not to disclose the Board's discussion regarding the Perlstadt case, on the advice of counsel.  
(Becker/Lightner: 5-0)

VIII. Report on Any Actions Taken in Closed Session Regarding Perlstadt, supra, Pursuant to Government Code Section 54957.1(a){2} and S.F. Administrative Code Section 67.14(b){2}

President Wasserman reported that the Board held a Closed Session to discuss the Perlstadt case with its attorney, and voted not to disclose the content of those conversations, on the advice of counsel.

IX. Consideration of Appeals

A. 327 & 329 Font Blvd.

AT020500 & -01

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$27.21. The tenants appeal on the grounds that the complex should be treated as one property, and the work does not meet the definition of "capital improvement" because: it does not materially add to the value of the property; it does not appreciably prolong the property's useful life, as roof replacement is more in the nature of repair; it does not adapt the building to new uses; and there is no evidence that the roof replacements are being amortized or depreciated over their useful lives. Additionally, the tenants assert that the Administrative Law Judge made several errors in the decision; and claim that the invoice provided was insufficient to document the work.

MSC: To deny the appeals. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

B. 56 Cambon Dr.

AT020502

The landlord's petition for certification of the costs of a new roof over four units was granted, resulting in a monthly passthrough in the amount of \$27.21. The tenant in one unit appeals on the grounds that the complex should be treated as one property, and the work does not meet the definition of "capital improvement" because: it does not materially add to the value of the property; it does not appreciably prolong the property's useful life, as roof replacement is more in the nature of repair; it does not adapt the building to new uses; and there is no evidence that the roof replacements are being amortized or depreciated over their useful lives.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

C. 1 Fuente Ave.

AT020504

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$19.63. The tenant in one unit appeals. The tenant is represented by the same representative as the tenant in unit 56 Cambon Drive, above, and puts forth the same arguments on appeal.



MSC: To deny the appeal except to remand the case on the record for a Technical Correction regarding the tenant's move-in date.  
(Gruber/Lightner: 3-2; Becker, Marshall dissenting)

AT020503

D. 16 Vidal Dr.

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$50.50. The tenant in one unit appeals. The tenant is represented by the same representative as the tenant in unit 56 Cambon Drive, above, and puts forth the same arguments on appeal.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

E. 101 Gonzalez Dr.

AT020505

The tenants' appeal was filed twelve days late because one of the tenants changed jobs and could not find the necessary paperwork.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Marshall: 5-0)

The landlord's petition for certification of the costs of a new roof over one unit was granted, resulting in a monthly passthrough in the amount of \$33.17. The tenants in that unit appeal the decision on the grounds of financial hardship.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

F. 1740 Beach St. #14

AT020497

The landlord's petition for certification of capital improvement costs to 3 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Gruber/Becker: 5-0)

G. 150 – 28<sup>th</sup> St. #4

AT020491

The landlord's petition for rent increases to 9 of 12 units based on increased operating expenses was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

H. 4120 Folsom St.

AT020498

The tenant's petition alleging decreased housing services and failure to repair was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the notice of hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.



MSC: To accept the appeal and remand the case for a new hearing; should the tenant fail to appear at the next hearing, absent extraordinary circumstances, no further hearings will be granted. (Becker/Marshall: 4-1; Gruber dissenting)

I. 6939 A California St.

AT020494

The tenant's petition alleging decreased housing services was denied because the Administrative Law Judge found that the landlord acted promptly to remedy the problems after being given access to the unit by the tenant. On appeal, the tenant claims that: the landlord has not responded to her requests for repair over the past year; and she has not failed to provide access to the unit in order for the landlord to perform the repairs.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

J. 1550 Bay St.

AL020496

Forty-one tenant petitions were granted, in part, alleging decreased housing services during a period of extensive renovation work on the property. Although the Administrative Law Judge found that most of the tenants' claims were barred by the Golden Gateway decision, rent reductions were granted for the loss of a sauna, showers and a steam room (\$25.00 per month); the permanent loss of temporary off-street parking spaces in front of the property (\$25.00 per month); and the removal of screen doors from apartments with sliding glass doors. The landlord appeals the decision, maintaining that: permanent loss of the sauna and steam room coincided with the reopening of the pool, which was in May of 1999; no competent evidence was introduced regarding the value of the sauna and steam room, or any of the allegedly reduced services; the amount granted to each tenant should vary depending on the extent to which the tenant used the facilities, the amount of rent the tenant pays, and any cost savings to the landlord; the "20 minute" parking spaces were not a housing service provided by the landlord, their loss was not "substantial", and the amount granted is excessive; the removal of the screen doors was related to the construction project and the rent reduction is therefore barred by Golden Gateway; the correct date for any rent reduction for the loss of the screen doors is April of 1998; tenant Lynn Barrett never had a screen door; any tenants granted a hardship deferral of the capital improvement passthrough should have that amount offset against any rent reduction granted for decreased housing services; and a payment plan should be established for any sums found to be owing from the landlord to the tenants due to decreased housing services, since the tenants were granted a payment plan for retroactive capital improvement passthrough amounts owed to the landlord.

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

K. 55 Dolores St.

AL020496

The landlords' petition for certification of capital improvement costs to the tenants in five units was granted, in part. The landlords appeal the disallowance of certain items, claiming that: the removal of the old fence and ivy were incidental to dry rot work, which constituted a capital improvement, and the tenants failed to object to certification of this work; the replacement of nine glass panels was improperly characterized as a repair; the dry rot work performed on the lower balcony of unit #3





did not benefit any of the other units in the building, and should only have been allocated to unit #3; the landlord was not provided with an opportunity to amend the petition; and the Rent Board has arbitrary standards for allocation of capital improvement costs.

The Deputy Director advised the Board that the landlord had only appealed as to two units, but other units in the building would be affected should the allocation of capital improvement costs change. Therefore, the Board agreed to re-schedule this matter in order to allow the landlord to amend the appeal.

#### X. Public Hearing

Proposed Amendments to Rules and Regulations Section 1.21  
The Blaine Family Trust v. Rent Board (Perlstadt)  
(Superior Court Case No. 500854)

A Public Hearing was held from 7:40 to 7:42 p.m. on proposed amendments to Rules and Regulations Section 1.21 that clarify that a tenant can occupy more than one unit in a building as their principal place of residence. The only speaker was Attorney Joe Bravo, who suggested that the Board clarify what is meant by the "subject premises." After discussion, the Board voted as follows below:

MSC: To adopt the proposed amendments to Rules and Regulations Section 1.21 with the suggested changes. The amendment clarifies that the Board intends and has understood the phrase "in a rental unit" not to preclude a tenant's use of more than one unit in a building as a principal place of residence where the tenant resides in the units with the knowledge and consent of the landlord. This clarifying amendment shall apply to all decisions issued after the effective date of the amendment and to all pending decisions for which no final court decision has been issued as of the effective date. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

The new language reads as follows below:

#### **Section 1.21 Tenant In Occupancy**

(Effective June 5, 2001; amended for clarification December 3, 2002)

A tenant in occupancy is an individual who otherwise meets the definition of tenant as set forth in Ordinance Section 37.2(t), and who actually resides in a rental unit or, with the knowledge and consent of the landlord, reasonably proximate rental units in the same building as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit or units at all times or continuously, but the unit or units must be the tenant's usual place of return. When considering whether a tenant occupies one or more rental units in the same building as his or her "principal place of residence," the Rent Board must consider the totality of the circumstances, including, but not limited to the following elements:

(1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;



(2) utilities are billed to and paid by the individual at the subject premises;

(3) all of the individual's personal possessions have been moved into the subject premises;

(4) a homeowner's tax exemption for the individual has not been filed for a different property;

(5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence; and/or

(6) Credible testimony from individuals with personal knowledge or other credible evidence that the tenant actually occupies the rental unit or units as his or her principal place of residence.

A compilation of these elements lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding.

#### XI. Communications

The Board received correspondence concerning cases on the calendar, and a letter from the San Francisco Apartment Association opposing the proposed amendments to Rules Section 1.21. In addition, the Commissioners received a copy of a letter from the Executive Director to Bert Polacci of Olympic View Realty (Parkmerced) regarding apparently improper PG&E passthroughs that have been imposed on most, if not all, tenancies at the property. In his letter, Mr. Grubb expresses the Department's concern that tenants who have not filed petitions challenging the passthroughs are paying unsubstantiated and unjustified amounts. Mr. Grubb gives Parkmerced until December 4, 2002 to provide supporting evidence for the passthroughs or a letter of intent to discontinue the passthroughs, or he advises that he will refer the matter to the Office of the District Attorney.

#### XII. Director's Report

Executive Director Grubb informed the Commissioners that the Staff Holiday Party would be held at Don Ramon's Restaurant on Thursday, December 19<sup>th</sup>, from noon until 2:00 p.m.

#### XIII. Old Business

Proposed Amendments to Rules and Regulations Section 1.18

Since there was no Neutral Commissioner in attendance at this point in the meeting, this issue was continued to the meeting on January 7<sup>th</sup>.

#### IV. Remarks from the Public (cont.)



B. Attorney Joe Bravo, representing Parkmerced, informed the Board that Parkmerced is taking the letter from Executive Director Grubb most seriously. Mr. Bravo stated that, if refunds were warranted, they would be issued. He said that management has to sort out what they inherited from the prior owner. He also said that Mr. Grubb would receive a draft response the following day.

C. Landlord Greg Blaine, who filed the Writ in the Perlstadt case, commented regarding the issue of tenants using two units as their principal place of residence "with the landlord's consent." Mr. Blaine said that he did not consent to rent control on any of his units, and that he "looks forward" to going back to living under the contracts that were originally made.

XIV. Calendar Items

December 10, 2002 - NO MEETING

December 17, 2002

10 appeals (1 cont. from 11/19/02; 1 rescheduled from 12/3/02)

XV. Adjournment

President Wasserman adjourned the meeting at 8:20 p.m.





November 15, 2002

WILLIE L. BROWN, JR.  
MAYOR

SHARON K. WASSERMAN  
PRESIDENT

**NOTICE OF PUBLIC HEARING**

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

POLLY MARSHALL  
VICE-PRESIDENT

DATE:	December 3, 2002	DOCUMENTS DEPT.
TIME:	6:30 P.M.	NOV 18 2002
PLACE:	25 VAN NESS AVENUE (AT MARKET ST.) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA	SAN FRANCISCO PUBLIC LIBRARY

KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE LANGUAGE BELOW AMENDING SECTION 1.21. This amendment clarifies that the Board intends and has understood the phrase "in a rental unit" not to preclude a tenant's use of more than one unit in a building as a principal place of residence where the tenant resides in the units with the knowledge and consent of the landlord. This clarifying amendment shall apply to all decisions issued after the effective date of the amendment and to all pending decisions for which no final court decision has been issued as of the effective date.

The proposed language reads as follows below (deletions indicated with strikeouts; new language underlined):

**Section 1.21 Tenant In Occupancy**  
(Effective June 5, 2001)

A tenant in occupancy is an individual who otherwise meets the definition of tenant as set forth in Ordinance Section 37.2(t), and who, with the knowledge and consent of the landlord, actually resides in a rental unit or rental units in the same building as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit or units at all times or continuously, but at the unit or units must be his or her the tenant's usual place of return. When considering whether a tenant occupies one or more rental units in the same building as his or her "principal place of residence," the Rent Board must





consider the totality of the circumstances, including, but not limited to the following elements: Evidence that a unit is the individual's "principal place of residence," includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding:

(1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) utilities are billed to and paid by the individual at the subject premises;

(3) all of the individual's personal possessions have been moved into the subject premises;

(4) a homeowner's tax exemption for the individual has not been filed for a different property;

(5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence; and/or

(6) Testimony from knowledgeable persons or other credible evidence whether the tenant actually occupies the rental unit or units as his or her principal place of residence.

A compilation of these elements lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding.

Comments may be mailed and should be received at the Rent Board no later than November 26, 2002, so that they can be mailed and received by the Commissioners prior to the hearing. Comments arriving after this time may not be able to be adequately considered. Comments may also be made in person at the hearing and will be limited to three minutes per person.





**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN  
PRESIDENT

POLLY MARSHALL  
VICE-PRESIDENT

Tuesday, 6:00 p.m.,  
December 17, 2002  
25 Van Ness Avenue, #70, Lower Level

**AGENDA**

**DOCUMENTS DEPT.**

- I. Call to Order  
KHIN MAI AUNG  
LARRY BEACH BECKER  
DAVID GUSTAV GRUBER  
FREDERICK HOBSON  
ANTHONY JUSTMAN  
MERRIE T. LIGHTNER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

DEC 13 2002

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PUBLIC LIBRARY

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations,  
members of the public shall be limited to comments of no more  
than 3 minutes' duration.**

V. Consideration of Appeals

- A. The Villas Parkmerced AT020508 thru -12

The tenants in five units appeal the decision granting certification of capital improvement costs.

- B. 50 Edgar Pl. AT020507

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

- C. 427 Stockton St., Apt. 709 AT020506

The tenant appeals the decision denying a claim that the PG&E passthrough had been improperly calculated.

- D. 1402 Ortega St. AL020519

The landlord appeals the decision granting a claim of unlawful rent increase.

- E. 1935 Franklin St. AL020495

The landlord appeals the decision granting certification of capital improvement costs.

- F. 1770 Broadway #605 AT020516



The tenant appeals the decision partially granting claims of decreased housing services.

G. 1308 Larkin St.

AL020517 & AT020518

The landlord and tenant appeal the decision certifying capital improvement costs.

H. 1935 Franklin St.

AL020489

(rescheduled from 12/3/02)

The landlord appeals the decision granting rent increases based on increased operating expenses.

I. 328 Garces Dr.

AT020253

(cont. from 11/19/02)

The tenant appeals the decision certifying the costs of a new roof on substantive grounds as well as a claim of financial hardship.

J. 3649 Market St. #201

AL020246

(cont. from 11/19/02)

The landlord appeals the decision granting a rent reduction due to the landlord's refusal to allow two replacement roommates.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment



## **ACCESSIBLE MEETING POLICY**

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.







**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.  
MAYOR

JOSEPH GRUBB  
EXECUTIVE DIRECTOR

Tuesday, December 17, 2002 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT

JAN 3 2003

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I. Call to Order

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Justman; Mosser;  
Murphy; Wasserman.  
Commissioners not Present: Lightner; Marshall.  
Staff Present: Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of November 19<sup>th</sup> and December 3<sup>rd</sup>,  
2002. (Gruber/Becker: 5-0)

IV. Remarks from the Public

A. Commissioner Frederick Hobson informed the Board and the public that he has resigned after having served on the Board for three years because his health is compromised. Mr. Hobson said that it had been "bittersweet," and a "learning experience." He expressed his thanks to the Executive and Deputy Directors, and told the Commissioners that they are a "great" Board, and not to let anyone tell them otherwise.

B. Robert Pender of the Parkmerced Residents' Organization (PRO) said that he would miss Commissioner Hobson personally. He told the Commissioners that he had his hardship appeal hearing that morning regarding the operating expense increase recently approved for Parkmerced, and that he felt "optimistic." He also said that PRO is in touch with the Office of the District Attorney and Board of Supervisors, and that they will "keep up the fight."

C. Ada Cook, the landlord at 1402 Ortega St. (AL020519), told the Commissioners that she is not appealing the amount of the overcharges. Rather, she believes that amounts paid by prior subtenants should go to them, rather than the entire amount going to the Master Tenant. Ms. Cook is afraid she will be liable in the event of a future action by the subtenants.

V. Consideration of Appeals

A. The Villas Parkmerced

AT020508 thru -12



The tenant at 750 Gonzalez Dr. #11D filed his appeal one day late because he experienced difficulty in retrieving photos from a remote computer file.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Gruber: 5-0)

The tenant at 750 Gonzalez #9C filed her appeal 23 days late because she could not understand the papers that she received from the Rent Board.

MSC: To find good cause for the late filing of the appeal.  
(Becker/Gruber: 5-0)

The landlord's petition for certification of the costs of painting six high-rise buildings to the tenants in 646 units was granted. Five tenants appeal the decision. The tenants at 350 Arballo #5L, 750 Gonzalez #9C and 750 Gonzalez #3G appeal the decision on the grounds of financial hardship. The tenant at 405 Serrano #11D claims that the landlord provided false information, that no primer coat was applied, and that the tenants are being charged for two coats of paint when only one was applied. The tenant at unit 750 Gonzalez #11D maintains that exterior painting and caulking cannot be considered a capital improvement since it did not solve waterproofing problems in his unit.

MSC: To accept the appeal of the tenant at 350 Arballo #5L and remand the case for a hearing on the tenant's claim of financial hardship.  
(Becker/Aung: 3-2; Gruber, Murphy dissenting)

MSC: To accept the appeal of the tenant at 750 Gonzalez #9C and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 3-2; Gruber, Murphy dissenting)

MSC: To accept the appeal of the tenant at 750 Gonzalez #3G and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 5-0)

MSC: To deny the appeal of the tenant at 405 Serrano #11D.  
(Murphy/Gruber: 3-2; Aung, Becker dissenting)

MSC: To deny the appeal of the tenant at 750 Gonzalez #11D without prejudice to the tenant's filing a petition alleging decreased housing services, if warranted. (Gruber/Murphy: 5-0)

B. 50 Edgar Place

AT020507

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant alleged that she failed to receive the notice of hearing, but failed to provide the requested Declaration of Non-Receipt of Notice of Hearing. Since the tenant is not a native English speaker, it was the consensus of the Commissioners to continue this appeal in order for staff to attempt to contact the tenant again.

C. 427 Stockton St., Apt. 709

AT020506



The tenant's petition alleging that a PG&E passthrough had been improperly calculated was denied. On appeal, the tenant argues that he should not have to pay the PG&E passthrough because his lease provides that the landlord shall pay for all utilities.

MSC: To deny the appeal. (Gruber/Murphy: 3-2; Aung, Becker dissenting)

D. 1402 Ortega St.

AL020519

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$23,461.85. On appeal, the landlord maintains that: the Master Tenant was familiar with the provisions of the Rent Ordinance, contrary to his assertions, because a prior subtenant had filed a claim against him for rent overpayments; the new lease was executed at the request of the tenant for consideration and constituted a novation of the prior oral tenancy; and, if the decision is upheld, a constructive trust should be established in order that sums overpaid by prior subtenants be distributed to them, and not constitute a windfall to the Master Tenant.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine the portion of the overpayments that were paid by the Master Tenant and which amounts were paid by subtenants, and for how long, and order refunds accordingly; the landlord and Master Tenant shall provide the names and current addresses of any known subtenants prior to the hearing. (Murphy/Gruber: 5-0)

E. 1935 Franklin St.

AL020495

The landlord's petition for certification of capital improvement costs to 35 of 42 units was granted, in part. On appeal, the landlord asserts that: the base rent and move-in date for unit #503 is contingent on the outcome of a pending comparables petition, which could make the tenants in that unit liable for certain of the capital improvement costs certified in the instant case; and a calculation error in the original decision led to the unfair disallowance of a large portion of the costs of plumbing improvements performed in 1998.

MSC: To recuse Commissioner Becker from consideration of this appeal. (Aung/Gruber: 5-0)

MSC: To accept the appeal and remand the case in order to allow the landlord to amend the petition. A hearing will be held, and the tenants will be given the right to raise objections, if any. No documentary evidence relating to additional costs since those brought forward in the Second Amended Petition will be allowed. The case is also remanded to make any necessary corrections to the rent of unit #503, dependent on the outcome of the pending comparables case. (Murphy/Gruber: 4-0)

F. 1770 Broadway #605

AT020516

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$371.00 due to water-



damaged floorboards around the radiator. The tenant appeals the decision, claiming that: the amount of the rent reduction is woefully inadequate; the word "purported" should be stricken from the decision; and the Administrative Law Judge erred in finding that he failed to meet his burden of proving that a support beam was damaged by radiator leaks.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge to change the word "purported" on page 8, paragraph 33 of the Decision to "proffered."  
(Gruber/Murphy: 5-0)

G. 1308 Larkin St.

AL020517 & AT020518

The landlords' petition for certification of capital improvement costs to one of three units was granted, in part, resulting in a \$270.66 monthly passthrough. The notice of rent increase issued to the tenant was found to be null and void, because it stated that the increase was effective as of January 1, 2001, instead of 2002. On appeal, the landlord claims that the mistake on the notice was a typographical error; it is not required that the effective date be on the notice; and everyone makes mistakes. The tenants also appeal the passthrough of the new heating system, on the grounds that: heat is a basic right; the work was necessitated by the former owner's and current management company's deferred maintenance; and the claimed work was not performed.

MSC: To recuse Commissioner Gruber from consideration of this appeal.  
(Murphy/Justman: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge to find that the notice of rent increase is not null and void, but is effective 30 days from the date of service on the tenants; if the tenants can show that payment of the retroactive amount owing would constitute a financial hardship, an installment plan shall be implemented. (Mosser/Murphy: 3-2; Aung, Becker dissenting)

MSC: To deny the tenants' appeal. (Murphy/Mosser: 4-1; Becker dissenting)

H. 1935 Franklin St.

AL020489  
(rescheduled from 12/3/02)

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 33 units. The landlord appeals the decision, arguing that: the operating expense increase should be calculated on the base rent in effect at the time the rent increase is imposed, and not the base rent in effect at the time the petition was filed; annual increases should be included in the base rent when the allowable operating expense increase is calculated, or there is a disparate result between tenants who have already received their annual increase and those who have not; and the rent increase to the tenants in unit #503 should be based on the adjusted base rent that will be authorized in a pending comparables case that is on remand.

Because the Administrative Law Judge's Memorandum in response to this appeal did not get mailed to the parties with sufficient time for them to respond, it was the







consensus of the Board to continue consideration of this appeal to the meeting on February 4th.

I. 328 Garces Dr.

AT020253  
(cont. from 11/19/02)

The landlord's petition for certification of the costs of a new roof over two units was granted, resulting in a monthly passthrough in the amount of \$21.85. The tenant in one unit argues that the work does not meet the definition of "capital improvement." The tenant additionally points out that the Administrative Law Judge inadvertently omitted the paragraph certifying the cost of the new roof from the decision. This case was continued from the meeting on November 19<sup>th</sup> in order for staff to find out whether the tenant wished to augment her substantive appeal with a hardship claim.

MSC: To deny the appeal on substantive grounds; however, to remand the case to the Administrative Law Judge on the record for a Technical Correction. (Gruber/Murphy: 3-2; Aung, Becker dissenting)

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Aung: 5-0)

J. 3649 Market St. #201

AL020246  
(cont. from 11/19/02)

The tenant's petition alleging decreased housing services due to the landlord's failure to allow two replacement roommates was granted and the landlord was found liable to the tenant in the amount of \$3,038.03. On appeal, the landlord asserts that: the tenant has not suffered a reduction in housing services because he has always been entitled to replace one roommate, and the open behavior of the parties has not established that the tenancy includes more than two people; the tenant failed to prove that the prior property manager approved any occupant other than the two signatories on the lease agreement; and certain findings in the decision are based on hearsay evidence.

MSF: To deny the appeal. (Becker/Aung: 3-2; Gruber, Murphy, Justman dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge to set aside the rent reduction granted for the period of time when the tenant believed he had been denied permission to obtain one replacement roommate; however, to allow the rent reduction granted for the tenant only being allowed to have two occupants in the unit, rather than three. (Murphy/Gruber: 3-2; Aung, Becker dissenting)

#### VI. Communications

The Commissioners received the monthly workload statistics for August, September and October, 2002.

#### VII. Director's Report



Executive Director Grubb informed the Board that the increase in the CPI was 1.4%; therefore, the annual allowable rent increase from March 1, 2003 through February 28, 2004 will be .8%. He told them that legislation sponsored by Supervisor Ammiano changing the way that capital improvement passthroughs are assessed would settle the Proposition H lawsuit when finally approved. The legislation will affect any petitions for capital improvement certification filed on or after November 14, 2002. The provisions of the legislation allow for tenants in buildings of six units or more to elect between paying 50% of the total passthrough, or 100% of the costs with a cap of 15%, phased in over three years. In buildings of five units or less, tenants would pay for 100% of the costs, but at a rate of no more than 5% per year and with longer amortization periods for the work.

Mr. Grubb also invited the Commissioners to the Staff Holiday Party, to be held on December 19<sup>th</sup> from noon to 2:00 p.m. at Don Ramon's restaurant.

IV. Remarks from the Public (cont.)

D. Laura Traveler, President of PRO, thanked the Commissioners for the time and energy they put in. She expressed her feeling, however, that fairness to tenants has not been adequately considered in the hearings with Olympic View Realty.

VIII. Calendar Items

December 24<sup>th</sup> & 31st - NO MEETINGS

January 7, 2002

9 appeal considerations

6:30 Appeal Hearing: 1670 Clay St. (AT020245) (acpt. 11/19/02)  
Old Business: Proposed Amendments to Rules Section 1.18

IX. Adjournment

President Wasserman adjourned the meeting at 8:11 p.m.











